CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 264

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

PAN-AMERICAN LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 20, 1940

CERTIORARI GRANTED OCTOBER 28, 1940

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SUPREME COURT OF THE UNITED STATES

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No. 264

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

PAN-AMERICAN LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TRANSCRIPT OF RECORD

UNITED STATES CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

versus

PAN-AMERICAN LIFE INSURANCE COMPANY,
Respondent.

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITION TO REVIEW THE DECISION OF THE

UNITED STATES BOARD OF TAX APPEALS

Docket No. 84638

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Appearances

For Taxpayer:
Eugene J. McGivney, Esq.,
Edwin J. Prinz, Esq.,
Solomon S. Goldman, Esq.,

For Comm'r.:
A. T. Akin, Esq.,

DOCKET ENTRIES

1936

May 25—Petition received and filed. Taxpayer notifed. (Fee paid)

May 25—Copy of petition served on General Counsel.

Jun. 25—Answer filed by General Counsel.

Jun. 27—Copy of answer served on taxpayer.

1937

Sep. 29—Hearing set week of Nov. 22, 1937 at New Orleans, La.

Nov. 29—Hearing had before Mr. Black, Div. 15 on merits. Submitted. Stipulation and supplemental stipulation as to facts filed at hearing. Petitioner's brief due Jan 14, 1938—respondent's due Feb. 15, 1938 and petitioner's reply due March 2, 1938.

Dec. 13—Notice of appearance of Edwin J. Prinz and Solomon S. Goldman as counsel filed.

Dec. 14—Transcript of hearing of Nov. 29, 1937 filed.

1938

Jan. 13—Brief filed by taxpayer. 1/14/38. Copy served.

Mar. 5—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 3/7/38 granted.

Mar. 23—Motion for leave to file the attached brief, filed by taxpayer. (1)

Mar. 23—Order receiving petitioner's reply brief out of time entered.

Mar. 23—Reply brief filed by taxpayer.

Mar. 24—Copy of order and reply brief served on General Counsel.

Apr. 27—Motion for leave to file the attached brief of the Oregon Mutual Life Insurance Company as an additional brief in this case, filed by taxpayer. 1 copy of brief lodged. 4/27/38 granted.

May 12—Motion for leave to file the attached brief as amicus curiae filed by taxpayer. 5/13/38 granted.

May 13—Brief as amicus curiae filed by taxpayer.

May 13—Copy of motion and brief served on General Counsel.

Dec. 23—Findings of fact and opinion rendered, Eugene Black, Div. 15. Decision will be entered under Rule 50.

1939

Jan. 24—Computation of deficiency filed by General Counsel.

Jan. 25—Hearing set March 1, 1939 on settlement.

Jan. 30—Consent to settlement filed by taxpayer.

Feb. 2—Decision entered, J. Russell Leech, Div. 6.

Apr. 14—Petition for review by U. S. Circuit Court of Appeals (5) with assignments of error filed by General Counsel.

Apr. 29—Proof of service filed by General Counsel.

2 1939

Apr. 24—Supersedeas bond in the amount of $4,000.00 approved and ordered filed.

Apr. 27—Petition for review by U. S. Circuit Court of Appeals (5) with assignments of error filed by taxpayer

Apr. 29—Proof of service filed by taxpayer.

May 6—Notice of filing petition for review with proof of service thereon filed by taxpayer.

May 25—Certified copy of order from the 5th Circuit consolidating the cause for hearing, briefing, argument and decision upon a single record filed. A copy of order to be incorporated in transcript.

Jun. 2—Joint praecipe for record filed. (Taxpayer & Commissioner).

Jun. 2—Stipulation re transcript of record filed. (Taxpayer & Commissioner)

Jun. 2—Agreed statement of evidence lodged.

Jun. 5—Agreed statement of evidence approved and ordered filed.

Jun. 13—Order extending time to July 15, 1939 for transmission and delivery of record entered. (Commissioner)

Jun. 17—Order extending time to July 15, 1939 for transmission and delivery of record entered. (Taxpayer)

U. S. Board of Tax Appeals

Filed May 25, 1936

UNITED STATES BOARD OF TAX APPEALS

Pan-American Life Insurance Company,
Petitioner.

vs. Docket No. 84638

Commissioner of Internal Revenue,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT: AR: C-6 CDG-90D), dated February 28, 1936, and as a basis of its proceeding alleges as follows:

I.

The petitioner is a Louisiana corporation with its principal office in the Whitney Bank Building, in the city of New Orleans, Louisiana.

II.

The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner Feb. 29, 1936.

III.

The taxes under controversy are income taxes for the calendar year 1933, in the sum of $4245.10.

IV.

The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

A. For the calendar year 1933 the petitioner's net income is over stated $29,327.24, in the mean of reserve funds for Supplementary Contracts, Incurred
4 Disability Benefits, and for Policies upon which a Surrender value may be demanded, upon which petitioner claimed a deduction of 3-3/4% in accordance with Sec. 203 (a) (2) of the Revenue Act of 1932.

B. For the calendar year 1933 the petitioner's net income is over stated $1546.27 by non-allowance of the deduction of said sum claimed for depreciation on furniture and fixtures, under Sec. 203 (a) (7) of the Revenue Act of 1932.

C. Without waiving its foregoing contention A, but relying thereon, petitioner, in the alternative, alleges that if it is not entitled to a deduction of 3-3/4% of the mean of reserve funds on Supplementary Contracts, Incurred Disability Benefits and Policies upon which a Surrender Value may be demanded, it should be allowed to deduct all interest paid, credited or accrued on the said reserve funds under Sec. 203 (a) (8) of the Revenue Act of 1932.

V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

A. That petitioner included in its income tax return for the calendar year 1933, 3¾% of the amount of reserve funds on Supplementary Contracts, Incurred Disability Benefits, and for Policies upon which a Surrender Value may be demanded, under items 3, 4 and 5 of Schedule A (Reserve Funds), as provided for in the printed return prepared by the Treasury Department for insurance companies for said year (a copy of which return is attached and marked Exhibit B), arrived at as follows:

5	January 1, 1933	December 31, 1933
Supplementary contracts,	$409,109.96	$434,204.53
Disability benefits	311,250.90	378,915.36
Liability on policies upon which a surrender value may be demanded,	13,393.65	17,245.00
	$733,754.52	$830,364.89
Add		733,754.52
Total		$1564,119.41
Mean		782,059.70
3-3/4%		29,327.24

That said reserve funds are in accordance with and are required by the laws of the State of Louisiana under which your petitioner is organized; they are reserves in accordance with and are required by the official annual statement upon which your petitioner is required by law to render to the Secretary of State, in charge of the enforcement of the laws of the State of Louisiana governing the operation of insurance business.

Petitioner avers that each of the said reserves was credited with compound interest at the rate of not less than 3½% annually, and that the same have been maintained at all times as an interest bearing liability under Act 105 of 1898 of the laws of the State of Louisiana, as amended, and under Act 114 of 1898 of the laws of the State of Louisiana, as amended.

B. That petitioner included in its income tax return for the calendar year 1933 a deduction for depreciation of 10% on all of its furniture and fixtures, which amounted to $15,128.48; that, under the report dated Sept. 12, 1935, prepared by agent Louis Damare, the said amount deducted by petitioner for depreciation was reduced to the sum of $3214.43, under a ruling of the Department that

the depreciation was limited to the furniture and fixtures used in the Investment Department, which was consented to by your petitioner and the additional assessment resulting therefrom was duly paid; that the Commissioner proposes in the notice of deficiency herein to further disallow the claim of petitioner for depreciation on furniture and fixtures used in the investment department by claiming that the life thereof is 20 years, instead of 10 years, as previously fixed in the report of Sept. 12, 1935; which results in a further reduction of $1546.27 in the amount of depreciation claimed by petitioner on this item.

Petitioner avers that the said claim in the report of the Commissioner is erroneous and prejudicial to the rights of petitioner in that the average life of the said furniture and fixtures is 10 years, and not 20 years, as claimed by Commissioner.

VI.

Petitioner relies upon the following propositions of law, to-wit:

A. Under Sec. 203 (a) (2) of the Revenue Act of 1932, life insurance companies are allowed to deduct 4% of the mean of reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3-3/4% shall be substituted for 4%. That the amount of reserve funds stated in the petitioner's return was the correct amount of the reserve funds required by the law of Louisiana, and that petitioner's deduction of 3-3/4% of said amount was in accordance with the said provisions of law. But, in the alternative, should the Board determine to not allow the said amount of 3-3/4% as a deductible reserve, then, in that event, your petitioner contends that under Sec. 203

(a) (8) of the Revenue Act of 1932, petitioner
7 should be allowed to deduct the amount of interest actually credited on the said reserves.

B. Under Sec. 203 (a) (7) of the Revenue Act of 1932 petitioner is allowed a reasonable allowance for the exhaustion, wear and tear of property, including a reasonable allowance for absolescence, and that an average life of 10 years for furniture and fixtures of an insurance company is correct and in accordance with the experience of petitioner.

WHEREFORE, petitioner prays that this Board may hear the proceeding and, after due proceedings had, there be judged in favor of petitioner and against the Commissioner of Internal Revenue that petitioner is entitled to deduct 3-3/4% of the mean of reserve funds on Supplementary Contracts, Incurred Disability Benefits and Policies upon which a surrender value may be demanded, for the calendar year 1933, and, in the alternative, should the Board determine to not allow the said amount as a deductible reserve, then, in that event, your petitioner contends that, under Sec. 203 (a) (8) of the Revenue Act of 1932, petitioner should be allowed to deduct all interest actually paid, credited or accrued on such indebtedness. Further, that there be judgment in favor of petitioner and against the Commissioner of Internal Revenue that petitioner is entitled to deduct depreciation on its furniture and fixtures on the basis of a life of 10 years, under Sec. 203 (a) (7) of the Revenue Act of 1932.

(Signed) Eugene J. McGivney
Counsel for Petitioner,
1340 Canal Bank Building,
New Orleans, Louisiana.

8 STATE OF LOUISIANA
PARISH OF ORLEANS

E. G. Simmons, being sworn, says that he is the Vice president of the Pan American Life Insurance Company, above named, and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

(signed) E. G. Simmons

Sworn to and subscribed to before me
this 23rd day of May, 1936.

(signed) Edwin J. Prinz

Notary Public.

(seal)

I certify the above and foregoing copy conforms to the original petition.

Eugene J. McGivney
Counsel for Petitioner.

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9

TREASURY DEPARTMENT

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

WASHINGTON

Exhibit "A"

Pan-American Life Insurance Co. Statement

The liability for coupons left with the company and for persistency bonus funds has been disallowed in accordance with the agent's report. See the case of Helvering v. Inter-Mountain Life Insurance Company, 294 U. S. 686.

The liabilities on supplementary contracts, disability benefits and cancelled policies upon which surrender values may be demanded have been disallowed as legal insurance reserves in accordance with Treasury Decision 4015, published in Internal Revenue Bulletin, Volume XIV, No. 52, December 30, 1935.

3 to 8, inclusive. These adjustments are set forth in the agent's report to which you have agreed.

Computation of Tax

Net income as adjusted		$132,825.80
Income tax at 13 3/4%		18,222.26
Tax assessed:		
Original, account #556101	None	
Additional, October 1938, #520005	$13,977.16	13,977.16
Deficiency		$ 4,245.10

In case you agree to the entire amount of the deficiency, please fill in the amount of $4,245.10 on the enclosed Form 870 (Waiver of Restrictions) and forward it, properly executed, to the Commissioner of Internal Revenue, Washington, D. C. However, if you agree in all of the adjustments making up the deficiency indicated, but would like to stop the accumulation of interest on that part of the deficiency resulting from adjustments to which you agree, please fill out the form 870 inserting therein the amount you desire to have assessed at once. In the event that you agree to only a part of the deficiency indicated, the execution of the form for the agreed portion of the deficiency will not deprive you of your right to petition the United States Board of Tax Appeals for a redetermination of the income tax liability for the year or years to which the report relates.

Form 870
TREASURY DEPARTMENT
Internal Revenue Service
Revised Oct., 1935.
IT:C:L-2

[illegible]-American Life Insurance Co.,
1208 Mutual Building,
[illegible]

(Date Received

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax

Pursuant to the provisions of [illegible] Revenue Act of 1934, and the corresponding provisions of prior Revenue Acts, the restrictions provided in Section 272 a of the Revenue Act of [illegible] and the corresponding provisions of prior Revenue Acts, as amended, are hereby waived and consent given to the assessment and collection of the following deficiencies in income tax and/or excess-profits tax:

taxable year ended [illegible] income tax in the sum of $

taxable year ended [illegible] income tax in the sum of $

taxable year ended [illegible] income tax in the sum of $

taxable year ended [illegible] excess profits tax in the sum of $

taxable year ended [illegible] tax in the sum of $

amounting to the total sum of $

together with interest thereon as provided by law.

(SEAL)

Date

NOTE. The [illegible] companying letter [illegible] above. It is [illegible] Revenue Act [illegible] deficiency on the [illegible] additional tax [illegible] refund assessment [illegible]

If the waiver [illegible] husband and wife [illegible] spouse may [illegible]

Where the [illegible] separate [illegible] corporation [illegible] seal of the corporation must be affixed.

Exhibit "A"

14

INSURANCE COMPANY INCOME TAX RETURN

For Calendar Year 1933

INSTRUCTIONS

The Instructions Supplemental [illegible]

GROSS INCOME AND DEDUCTIONS

1. Interest.—Enter gross [illegible] taxable year. Interest [illegible]

2. Dividends.—Enter as [illegible] from a domestic corporation [illegible] Act of 1932, other than [illegible] the Revenue Act of [illegible] China Trade Act, 1922 [illegible] the satisfaction of the [illegible] income of such foreign [illegible] close of its taxable year preceding the [illegible] part of such period as [illegible] engaged within the United States [illegible] corporation not subject to taxation [illegible] Enter as Item 2 (c) dividends from a [illegible] corporation described in [illegible] of this paragraph.

3. Rents.—Enter as Item 3 rents received [illegible]

4. Total income.—Enter as Item 4 the [illegible]

5. Interest exempt from taxation.—Enter as [illegible] received on the following obligations [illegible] thereof of a State, Territory [illegible] and political subdivisions thereof, the District of Columbia; (2) Securities issued under the provisions of the Federal Farm Loan Act [illegible] or under the provisions of such Act [illegible] or obligations of corporations [illegible] United States. Submit a schedule [illegible] of obligations, (b) amount of [illegible]

6. Percentage of the mean of the reserve funds required as Item 11 in Schedule A [illegible] an amount equal to 4 per centum of [illegible] life and held at the beginning and [illegible] date of any such reserve fund which [illegible] rate of 3½ per centum shall be [illegible] companies issuing policies covering [illegible] contained in one policy issued on the [illegible] for life and not subject to nonparticipation [illegible] a reduction of 3½ per centum of the mean [illegible] fund) held at the beginning and end of the [illegible] shall be necessary for the protection [illegible]

7. Dividends.—Enter as Item 7 the total [illegible] under section 203 (a) (3) of the Revenue Act [illegible]

8. Two per cent of the reserve held for deferred dividends or an amount equal to 2 per cent of the [illegible] **7.** Deferred dividends the payment of [illegible] more than five years from the date of the [illegible] Excess dividends payable during the [illegible]

9. Investment expenses.—Enter as Item 9 [illegible] allocable to investment expenses. The [illegible] allocation of general expenses to investment expenses [illegible] of 1 per cent of the mean of the [illegible] **10.** Submit a schedule showing the nature and amount [illegible] Item, the minor items being grouped [illegible] the Revenue Act of 1932.

10. Taxes.—Enter as Item 10 taxes [illegible] the company, and that proportion of [illegible] taxes paid by the company [illegible] section 23 (c) (6) of the Revenue Act [illegible] local benefits of a kind [illegible] assessed, as for paving, sewers, etc.

11. Other real estate expenses. Enter as Item 11 [illegible] expenses, such as [illegible] **Ordinary repairs** which neither [illegible] substantially prolong its life but [illegible] **Capital improvements.** Do not include any amount [illegible] **Capital improvements** or betterments made to increase [illegible]

12. Depreciation.—The amount [illegible] Item 12 is an amount charged off [illegible] allowance of exhaustion, wear and tear [illegible] of property used in the business [illegible] upon the basis of the cost of the property [illegible] the cost or value as of that date [illegible] number of years remaining of its useful life [illegible] acquired before March 1, 1913, and if the cost [illegible] the market value as of that date [illegible] actually sustained before that date [illegible] depreciation the following information [illegible] required therein should correspond with [illegible] books. In case of insurance [illegible] and the basis upon which [illegible] in this schedule [illegible] claims within the year [illegible]

Kind of property (if building, state whether of brick or frame)	Date acquired	Cost or other basis	Depreciation allowed (or allowable) in prior years	Method used in computing depreciation	Rate per cent	Amount of depreciation for the year

Furniture and fixtures

Automobiles

Leasehold

13. Interest on [illegible] during the taxable year [illegible] incurred or assumed [illegible] upon property [illegible] on deposit and [illegible] them.

14. Rental value of [illegible] or a [illegible] [illegible] corporation [illegible] of 1932, as [illegible] value of [illegible]

15. [illegible] business [illegible] there [illegible] and [illegible]

Exhibit B

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16 U. S. Board of Tax Appeals

Filed June 25, 1936

UNITED STATES BOARD OF TAX APPEALS

PAN AMERICAN LIFE INSURANCE COMPANY,
Petitioner.

v. DOCKET NO. 84638.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ANSWER

COMES now the Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, and for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1, II and III. Admits the allegations in paragraphs I, II and III of the petition.

IV. Denies that the Commissioner erred as alleged in sub-paragraphs A, B and C of paragraph IV of the petition.

V. Denies the allegations in sub-paragraphs A and B of paragraph V of the petition.

VI. Denies the allegations in sub-paragraphs A and B of paragraph VI of the petition.

Denies generally and specifically each and every allega-

tion in the petition not hereinbefore expressly admitted, qualified or denied.

WHEREFORE, it is prayed that petitioner's appeal be denied.

(Signed) HERMAN OLIPHANT,
General Counsel
for the
Department of the Treasury.

OF COUNSEL:
I. GRAFF,
V. F. WEEKLEY,
Special Attorneys,
Bureau of Internal Revenue.
VFW/vgs 6/23/36.

17 U. S. Board of Tax Appeals

Filed at Hearing Nov. 29, 1937

Pan American Life Insurance Company
Petitioner

Docket No. 84,638

Commissioner of Internal Revenue
Respondent

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties through their respective counsel that the following facts may be taken as true, provided, that either party may introduce further and other testimony not inconsistent with the facts herein stipulated.

I.

That petitioner withdraws and abandons the assignment of error contained in subparagraph (A) of paragraph IV of its petition as to the reserve funds on Supplementary Contracts and policies upon which a Cash Surrender Value may be demanded, and agrees to the reserve adjustment on

said items as determined by the Respondent and set out in the deficiency notice.

II.

That among the states in which the Petitioner transacted business in the calendar year 1933 were Louisiana, Oklahoma, Indiana and Illinois. That in 1933 it issued life insurance policies with non-cancellable premium waiver benefits as well as policies with both non-cancellable monthly income benefits and premium waiver benefits in the event of the insured becoming totally and permanently disabled by accident or disease; copies of such
18 policies, with disability provisions attached, being annexed hereto and made a part hereof and marked Exhibits "C" and "D" respectively.

In 1933 petitioner maintained a reserve for unpaid and unresisted claims incurred under said disability provisions of the type attached to exhibits "C" and "D". That the amount of the reserves so maintained is as set forth in the following table:

	Beginning of Year	End of Year
Reserve for premium waiver benefits	$93,375.27	$113,674.60
Reserve for monthly income benefits	217,875.64	265,240.76
	311,250.91	378,915.36

That the mean reserve amounts to $345,083.13 and the 3 3/4% thereof equals $12,940.62.

III.

That under petitioner's alternative plea in subparagraph (C) of Paragraph IV, petitioner held deposits under the

following forms of Supplementary Contracts, Trust Agreements and Installment Certificates, as follows:

(a) Ordinary Life: Monthly Income Policies in which the policy provides for a lump sum payment at death and for a series of 240 monthly installments; and Ordinary Life Policies, providing for installment settlements selected by the Insured, payable over a period of from five to twenty-five years.

That forms of such policies are attached hereto and made a part hereof and marked Exhibits "E" and "F" respectively.

That the funds held on deposit under such policies on the first day of 1933 was $270,164.83 and that $6,575.56 entered the fund in 1933 and that petitioner added interest of $9,282.31 to the said fund in 1933, which interest was computed at 3½% per annum, making the total fund $286,022.70, and paid out of said fund $27,353.31, leaving $258,669.39 in the fund on the last day of 1933 as shown by schedule annexed hereto and made a part hereof and marked Exhibit "G".

19 (b) Trust Agreements, entered into by the Insured for the deposit of the proceeds of the policy with petitioner, in which petitioner agrees to credit the balance of said proceeds remaining in its possession before the payment of the installment then due with one year's interest at the rate of four and one half (4½%) per cent, under which Agreement the proceeds and interest are payable to the beneficiary in stated installments, beginning immediately upon receipt of proof of death of the insured, until the principal and interest are exhausted.

That form of such Trust Agreement is attached hereto and made a part hereof and marked Exhibit "H".

That the fund held on deposit under such Trust Agreements on the first day of 1933 was $96,564.01 and that $39,354.27 entered the fund in 1933 and that petitioner added interest of $4615.05 to said fund in 1933, which interest was computed at 4½%, making a total of $140,533.33 and paid out of said fund $16,-749.45, leaving $123,783.88 in the fund on the last day of 1933 as shown by schedule attached hereto and made a part hereof and marked Exhibit "I".

(c) Trust Agreements, entered into by the Insured, for the deposit of the proceeds of the policy with petitioner, in which petitioner agrees that the said net proceeds shall bear interest at the rate of 3½% per annum on funds remaining in the Company's possession at the end of each year, under which Agreements the interest was payable to the Beneficiary until a designated date and then the principal sum is payable to the Beneficiary.

That form of such Trust Agreement is attached hereto and made a part hereof and marked Exhibit "J".

That the fund held on deposit under such Trust Agreements on the first day of 1933 was $14,856.57 and that $12,405.03 entered the fund in 1933 and that petitioner added interest of $257.88 to the said fund in 1933, which interest was computed at 3½%, making a total of $27,519.48 and paid out of said fund $202.90, leaving $27,316.58 in the fund on the last day of 1933 as shown by schedule attached hereto and made a part hereof and marked Exhibit "K".

(d) Installment Certificate where the Beneficiary elects to receive the proceeds payable in a lump sum in installments.

That form of such installment Certificate is attached hereto and made a part hereof and marked Exhibit "L".

That no funds were held on deposit under such Installment Certificates on the first day of 1933, but $4,962.00 entered the fund in 1933 and that petitioner added interest of $160.98 to the said fund in 1933, the interest being computed at 3½% per annum, making the total fund $5122.98 and paid out of said fund $450.00 leaving $4,672.98 in the fund on the last day of 1933, as shown by schedule attached hereto and made a part hereof and marked Exhibit "M".

(e) Installment Certificate where the Insured has applied for the cash value of policies and agrees to receive same in installments.

That form of such Installment Certificate is attached hereto and made a part hereof and marked Exhibit "N".

That $1579.10 was held on deposit under such Installments Certificates on the first day of 1933 but nothing entered the fund in 1933 and petitioner added interest of $40.28 to the said fund in 1933, the interest being computed at 3½% per annum, making the total fund $1619.38 and paid out of the said fund $465.40 leaving $1153.98 in said fund on the last day of 1933, as shown by schedule attached hereto and made a part hereof and marked Exhibit "O".

New Orleans, La. November 29th, 1937

Solomon S. Goldman,
Edwin J. Prinz
Counsel for Petitioner

(s) J. P. Wenchel
Counsel for Respondent

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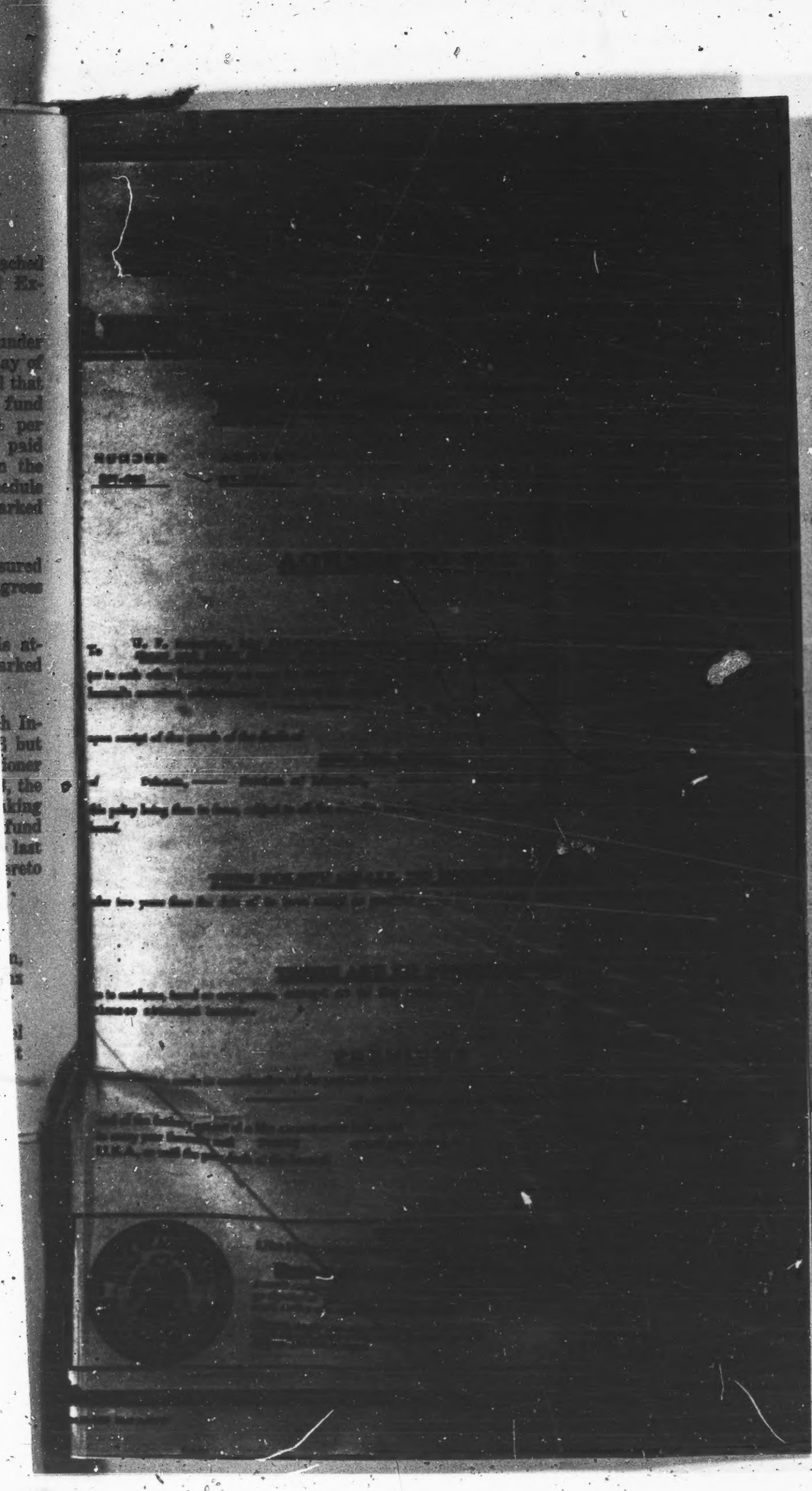
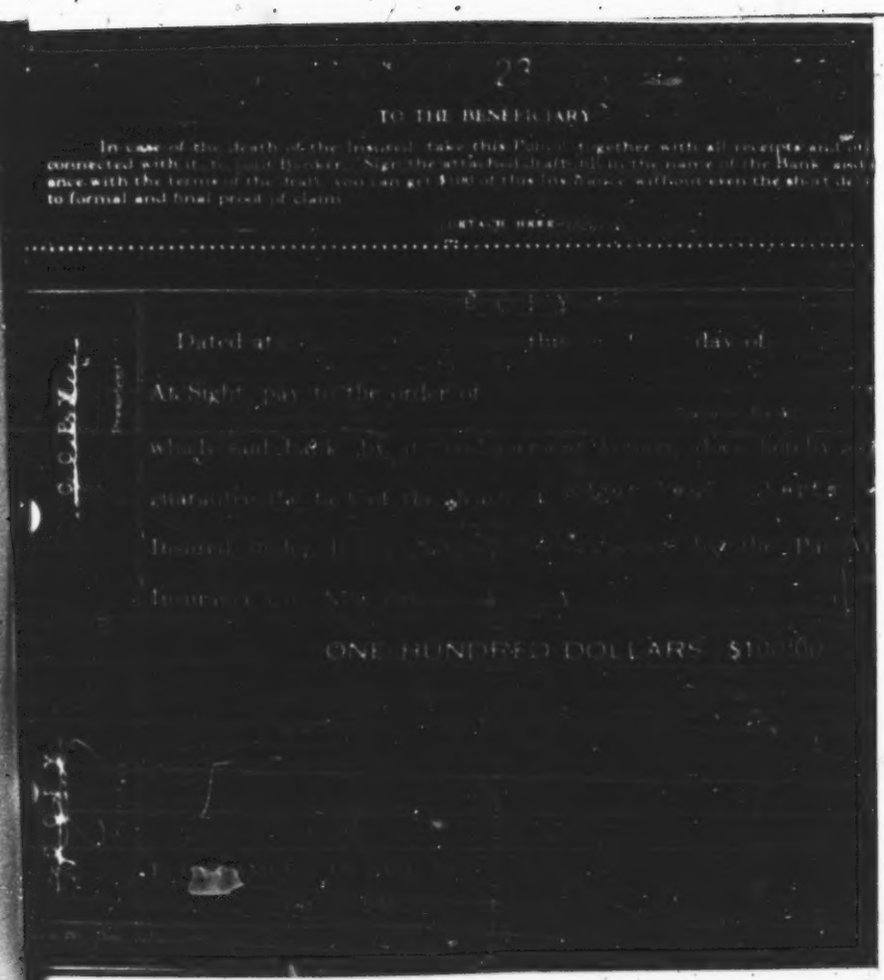


BENEFITS, PRIVILEGES AND CONDITIONS

TABLE OF OPTIONS



TO THE BENEFICIARY

In case of the death of the Insured, take this Policy, together with all receipts and other papers connected with it, to your Banker. Sign the attached draft, fill in the name of the Bank, and in accordance with the terms of the draft, you can get $100 of this Life Policy without even the short delay due to formal and final proof of claim.

DETACH HERE

POLICY

Dated at ... this ... day of ...

At Sight pay to the order of ...

ONE HUNDRED DOLLARS $100.00

PAN-AMERICAN LIFE INSURANCE COMPANY

R 67392 USE BLACK INK ... PHOTOGRAPHED ... 16

APPLICATION, PART I.

I, Edgar P. Roberts

PAN-AMERICAN LIFE INSURANCE COMPANY OF NEW ORLEANS,

for one of the policies on the plan described below, applied for by me, and numbered as above, do hereby make application for insurance on the life of

Sterling Roberts

the undersigned, and request that the policy, if issued hereon, be delivered to the

Insured

at

Lot 24 Block 10 Fairview Subd.

Fairview Addition

E PAN-AMERICAN ...

APPLICATION, PART ...

COPY

PAN-AMERICAN LIFE INSURANCE COMP

DOUBLE INDEMNITY

This agreement is issued as a part of and attached to Policy No. 267-283 issued on the
of April 1938 on the life of Edgar Paul Roberts

Upon receipt of due proof (without aid from any legal presumption) that the death of the In
rectly and independently of all other causes from bodily injuries effected solely through external,
dental means, of which (except in case of drowning or internal injuries revealed by autopsy) ther
tumon or wound on the body, and that such death occurred within ninety days after such injury,
Life Insurance Company will (subject to the conditions hereinafter provided) upon surrender of t
tion to and together with the amount payable under the terms of said policy upon the death of

One Thousand Dollars to the beneficia

It is mutually agreed, however, that such double indemnity shall not be payable if the Insur
directly or indirectly, from (a) self destruction, whether sane or insane; (b) asphyxiation, or the t
of poison or the inhaling of gas, whether voluntary or otherwise; (c) engaging in or resulting fro
law; (d) war or any act incident thereto; (e) engaging in riot or insurrection; (f) police duty in
ination; (g) pistol or other gunshot wounds inflicted by the Insured himself, whether intentio
tionally; (h) operating or riding in any kind of air craft or submarine, whether as a passenger or
firmity of mind or body, or illness or disease, wholly or partly contributing to death; (j) any
other than that occurring in consequence of accidental and external bodily injury; or (k) bodily i
inflicted by another person.

The Company shall have the right and opportunity to examine the body, and to make an au
hibited by law.

This provision shall not be in effect if the policy is running on Extended or Paid Up insurance.
Total and Permanent Disability Benefit under the policy has been approved by the Company, and
nity Benefit shall be payable only if all premiums have been duly paid, and the policy at the time
Insured is then in full force. The Incontestability Clause in the policy shall not apply to this Double

This agreement shall automatically terminate whenever the premium paying period ceases,
comes paid up.

The total premium stated on the first page of the policy includes an annual premium of $1.5
Double Indemnity Benefit.

IN WITNESS WHEREOF the Pan American Life Insurance Company has caused this agree
this 9th day of April 1938

COPY

Secretary

Countersigned by

(Original Signed) J. McVay Powers

Registrar

Form [illegible]

Total and Permanent Disability
Waiver of Premiums

Supplementary Contract attached to and made part of Policy Number [illegible]

Issued on the life of [illegible] Edgar Paul Roberts

Pan-American Life Insurance Company

IN CONSIDERATION of the application for this supplementary contract and the payment in advance hereof, and in consideration of the payment of premiums as hereinafter provided, the Company payable annually on the life of the Insured named in the policy to which this supplementary contract is attached, and hereby makes it a part thereof, and subject to the regular premium under the said policy as hereinafter provided,

HEREBY AGREES that upon receipt at its Home Office of due proof, which shall be furnished by the Company on request, that the Insured has become totally and permanently disabled on the anniversary date of said policy nearest the attainment of age [illegible] by bodily injury or disease occurring after the payment of the premium next preceding the anniversary date of said policy nearest the attainment of age [illegible] and before default in the payment of any premium hereunder, and from such time during the continuance of such disability as the Insured is prevented thereby from engaging in any business or occupation and from performing any work for compensation or profit

BENEFITS, PRIVILEGES AND CONDITIONS—CONTINUED

AGE—If the age of the Insured has been misstated, the amount payable under this policy shall be such as the premiums paid would have purchased at the correct age.

INDEBTEDNESS—Any indebtedness to the Company on account of this policy will first be deducted in any settlement under this policy. In any settlement as a death claim, any balance of the current year's premium remaining unpaid will also be deducted.

ASSIGNMENT—This policy may be assigned, but the assignment must be in writing, and the Company shall not be deemed to have knowledge of such assignment unless the original or a duplicate thereof is filed at the Home Office of the Company and its receipt duly acknowledged. The Company will not assume any responsibility for the validity of any assignment.

PROOFS OF DEATH—Settlement shall be made upon receipt of due proof of death and of the interest of the claimant.

SELF DESTRUCTION—In the event of self destruction within two years from the date of the issue of this policy, whether the Insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums thereon which have been paid to and received by the Company, and no more.

INCONTESTABILITY—This policy shall be incontestable for the amount due after it shall have been in force during the lifetime of the Insured, for two years from its date, except for non-payment of premiums, and except as to the conditions in the Disability and Double Indemnity clauses attached hereto, if any.

POLICY IN FORCE—No obligation is assumed by this Company upon this policy until the first premium has been actually paid to a duly authorized agent, and the policy duly delivered during the lifetime and good health of the Insured, whereupon the policy takes effect as of the date of issue written in below.

IN WITNESS WHEREOF the Company has caused this Policy to be executed this Second day of January

Nineteen Hundred and Thirty-five.

Secretary

Crawford H Ellis

President

Examined and Countersigned

(Original Signed) [illegible]

Secretary

The following riders are attached hereto and made a part hereof:

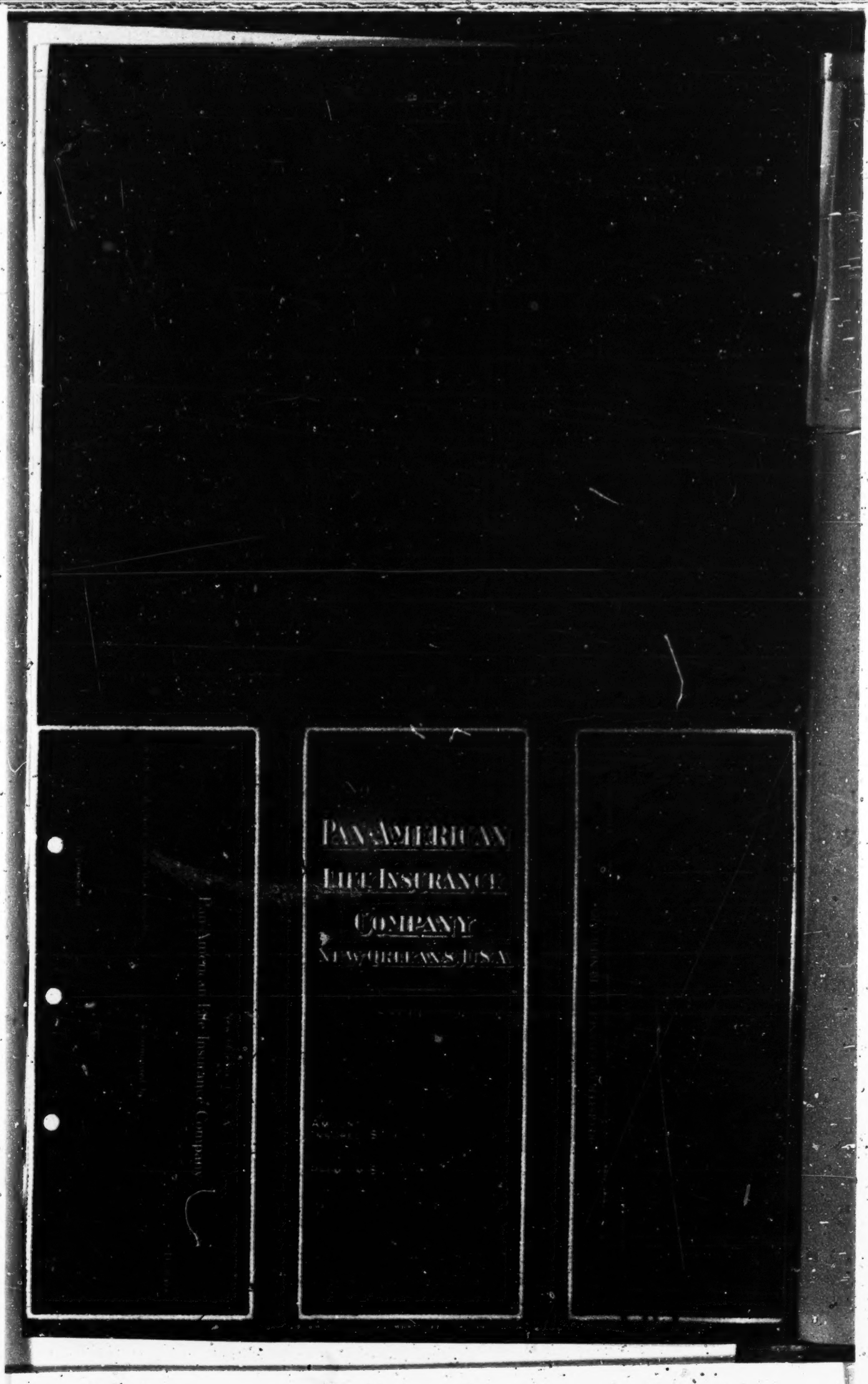
Disability [illegible]

Bonus rider [illegible]

Death [illegible]

Premium [illegible]

Double [illegible]


PAN-AMERICAN
LIFE INSURANCE
COMPANY
NEW ORLEANS, LA.

PAN-AMERICAN
LIFE INSURANCE COMPANY
NEW ORLEANS, U.S.A.

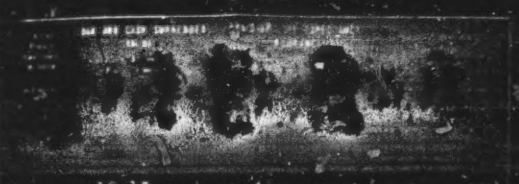
NUMBER

YEARS

AGREES TO PAY

BENEFITS, PRIVILEGES AND CONDITIONS

TABLE OF OPTIONS



10.13					
14.48					
19.35					
23.71					
28.22					
32.98					
37.67					
42.22					
47.62					
52.76					
57.[illegible]					
63.25					
68.44					
73.12					
77.63					
[illegible].74					
[illegible]					
[illegible].[illegible]					

OPTION OF CONVERSION

ORIGINAL AGE

ATTAINED AGE

DISABILITY PROVISION

PREMIUMS

[illegible] LOANS

GRACE IN PAYMENT OF PREMIUMS

REARRANGEMENT OF PAYMENTS

NON-FORFEITURE PROVISIONS

REINSTATEMENT IN EVENT OF LAPSE

Tightly Bound

TO THE BENEFICIARY 32

In case of the death of the Insured, take this Policy, together with all receipts and othe
nected with it, to your Banker. Sign the attached draft, fill in the name of the Bank, and if
e with the terms of the draft, you can get $100 of this Insurance without even the short delay
formal and final proof of claim.

DETACH HERE

COPY

Dated at this day of

At Sight, pay to the order of

Name of Bank

which said bank, by its endorsement hereon, does hereby certi
guarantee the fact of the death of Roland Earle Blue

Insured under Policy No. 223-309 issued by the Pan Amer
Insurance Co. New Orleans, U. S. A.

ONE HUNDRED DOLLARS $100.00

SUBJECT TO THE P[illegible] WHICH THE HEREBY MUTUALLY AGREED T

Provided the said Policy shall be in force at the time of the death of the Insured; that the same or such sha
the Insurer from further benefit accruing under it; [illegible] of the death shall not be construed as
liability to the Insurer and shall in no way [illegible] the right of the Insur
further claim; and that the obligation of the Insurer to pay shall be subject to any existing assignment of
the Assignee or Assignees, shall be his or their proper receipt or receipts, which receipt or receipts
of the amount hereof. The signature and address of the Assignee or Assignees [illegible] that any payment of the sum he

To PAN AMERICAN LIFE INSURANCE CO.
NEW ORLEANS, U. S. A.

Beneficiary sign here

President

Secretary

(Ins. 3-33)

POLICY

Policy No.

Life Insurance Company

Roland Eagle Blum,

September 4th,

USE BLACK INK and TYPE in ALL CAPITALS

APPLICATION, PART I.

No. R 65070 Application No. 16

I, Roland Earle Blue hereby apply to

PAN-AMERICAN LIFE INSURANCE COMPANY OF NEW ORLEANS,

for one of its policies on the Guaranteed Issue Life Expectancy plan.

WITH [MONTHLY INCOME DISABILITY] [X] [PREMIUM WAIVER DISABILITY] [X] [DOUBLE INDEMNITY] [ ] in the amount of $ 5,000

with premiums of $ 76.50 payable Quarterly annually in advance.

My occupation is that of Mail Teller.

My duties are Receive & Deliver Mail in Vicinity of Mail Window (Teller)

I am employed by Charlotte Nat'l Exchange at Banking Bureau.

My place of business is Mail & Express Dept Charlotte, Mecklenburg Co. N.C.

My residence is 515 Mint St. Charlotte, Mecklenburg Co. N.C.

If temporary address, how long there? ... Permanent address? Rutland Vt.

Have lived in above City, Town or County 2 yrs. Previous address? Rutland Vt.

Bank Premium Notice to Charlotte Nat'l Bank, Charlotte N.C.

I was born at North Council Mill Creek, Burke Co. N.C.

on the 5th of November 1901 My age at my nearest birthday is therefore 20 years.

Beneficiary Estate of Insured

Make Policy payable to

Address

with the right of revocation, except by said beneficiary reserved to me.

I HAVE NEVER applied to any Company for insurance on my life WITHOUT RECEIVING THE POLICY, of the exact amount, kind and premium rate, applied for, EXCEPT AS FOLLOWS: No Exceptions

FOR HOME OFFICE ENDORSEMENT ONLY

I have paid to Jay J. Doyle, Agent, $ 19.20 on account the first premium on the policy applied for in accordance with the provisions of the Conditional Receipt, Part II hereof, and agree to the conditions thereof.

In behalf of myself and every person who shall have or claim any interest in any policy issued in consequence of this application, including that this and Part II hereof shall constitute one and the same contract, and each and every of the statements, warranties and agreements of Part II of this application are fully understood and are made a part of this application, and that no statement or promise of any agent or other person shall be binding upon the Company unless contained herein or endorsed hereon, and that no statement or knowledge of any agent or other person shall be deemed to be notice to or known by the Company unless contained herein, and that no statement or knowledge of any agent or other person shall be deemed to be a waiver of any provision or condition of this application or of any policy issued in consequence hereof unless such waiver is endorsed hereon or attached hereto, and that no agent or other person has authority to make or modify any contract of insurance or to waive any forfeiture or to extend the time of the first premium payment or to receive any premium not required to be paid in advance, and that the Company shall not be bound by any statement or promise relative to any insurance or annuity on my life or on the life of any other person in which I may have an insurable interest, unless it is made in writing and presented to the Company at its Home Office in New Orleans, Louisiana

Form [illegible]

Total and Permanent Disability
Waiver of Premiums and Payment of Monthly Income

Supplementary [illegible]

Issued to the life of [illegible]

Pan-American Life Insurance Company

IN CONSIDERATION [illegible]
ance hereof, and [illegible]
payable [illegible]
the regular [illegible]

HEREBY [illegible]
be furnished [illegible]
the anniversary [illegible]
occurring after the [illegible]
for completed [illegible]
of such duration [illegible]
during the continuance of [illegible]

1. Waive the payment [illegible]
which next succeeds the date [illegible]
one year prior to the date [illegible]

2. Pay to the Insured [illegible]
monthly amount of [illegible]
income to be paid [illegible]
case shall any such monthly [illegible]
any period of disability [illegible]

No case shall [illegible]
written notice of [illegible]
within one year [illegible]

(a) [illegible]

(b) [illegible]
grace period allowed [illegible]
premium in default [illegible]

The waiver of premiums [illegible]
benefits shall accrue as [illegible]
the interest on said [illegible]
not be subject to [illegible]

Written notice of [illegible]
continuance of total disability [illegible]
claim if it ever be [illegible]
within such times and [illegible]

Notwithstanding [illegible]
from the Company [illegible]
Company will not refund [illegible]
Insured shall be [illegible]
come hereunder [illegible]
due shall be paid [illegible]

The [illegible]
forfeiture [illegible]
cept as a fare [illegible]
of war. The [illegible]
war in which [illegible]

If premiums [illegible]
the Insured [illegible]
hereof shall [illegible]

The [illegible]
with the return [illegible]

This [illegible]
supplementary [illegible]
if said policy [illegible]

This supplementary [illegible]
rates and [illegible]
by such [illegible]

[illegible]

less [illegible]
month [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

36

BENEFITS, PRIVILEGES AND CONDITIONS—CONTINUED

BENEFICIARY

AGE

INDEBTEDNESS

ASSIGNMENT

PROOFS OF DEATH

SELF-DESTRUCTION

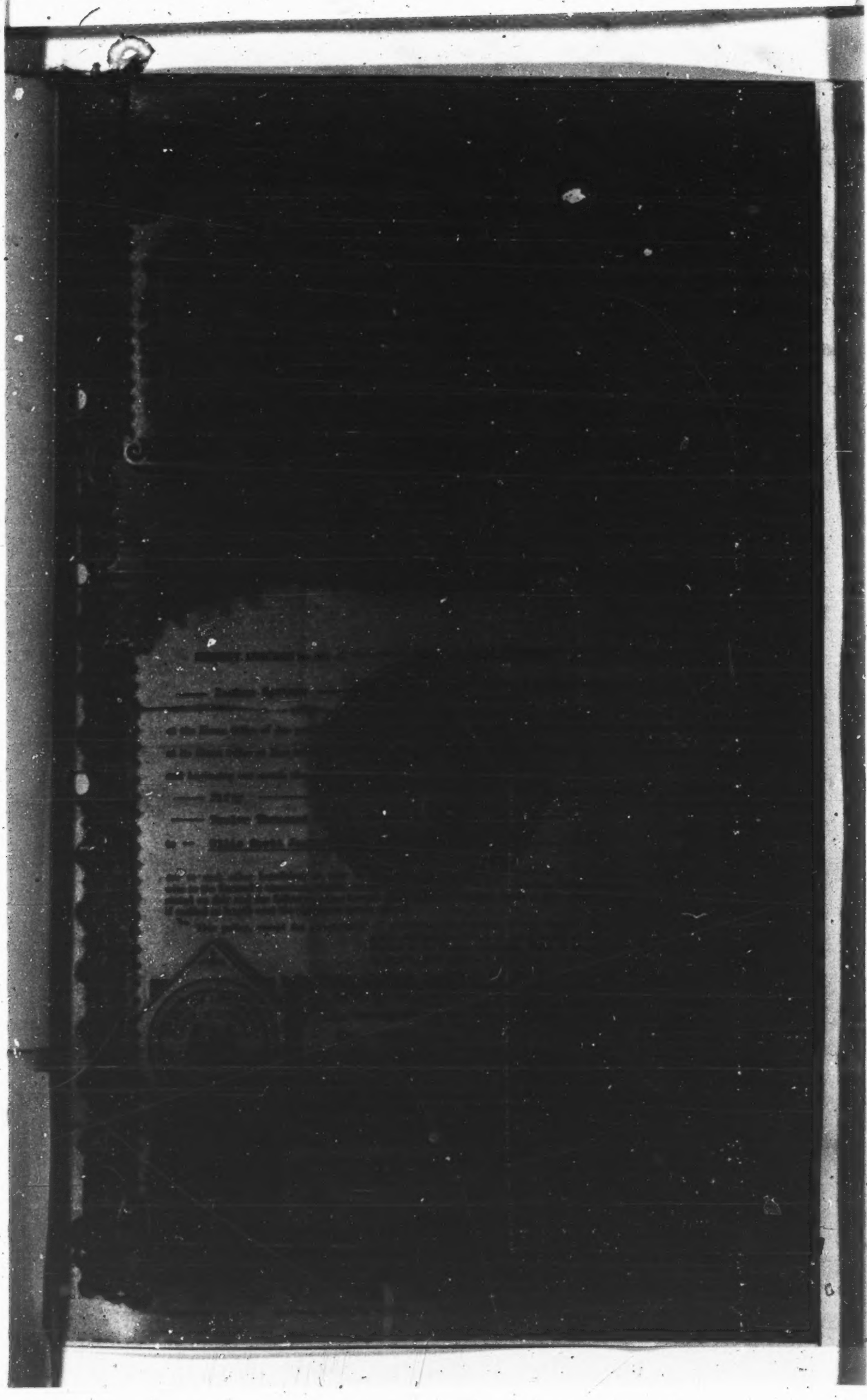
INCONTESTABILITY

POLICY IN FULL

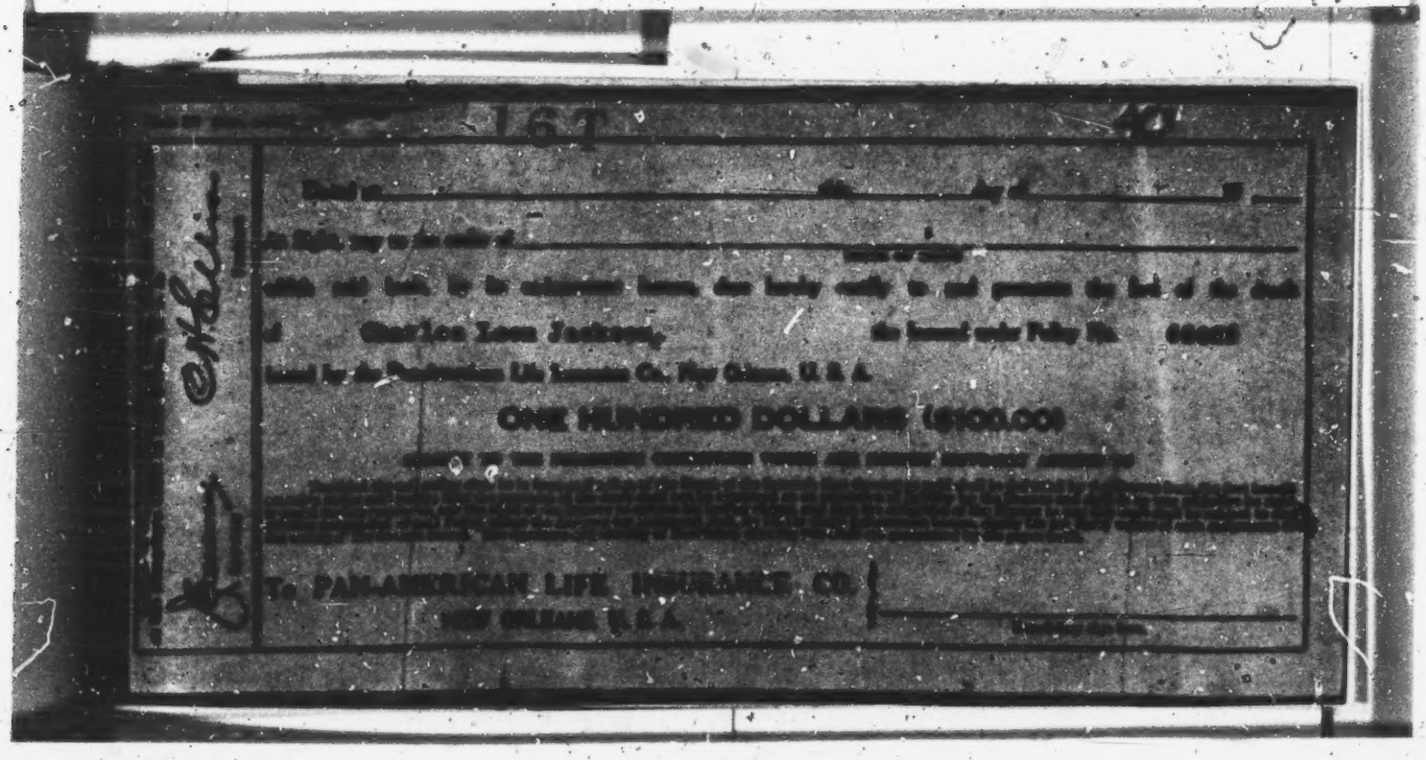
PAN-AMERICAN
LIFE INSURANCE
COMPANY
NEW ORLEANS, LA., U.S.A.

Pan American Life Insurance Company

REGISTER OF CHANGE OF BENEFICIARY



PRIVILEGES AND CONDITIONS


167
ONE HUNDRED DOLLARS ($100.00)
To PANAMERICAN LIFE INSURANCE CO.
NEW ORLEANS, U.S.A.

16 V 41

PAN-AMERICAN LIFE INSURANCE COMPANY

DOUBLE INDEMNITY FOR MONTHLY INCOME POLICIES

Upon receipt of due proof that the death of the Insured occurred as a consequence of bodily injuries effected solely through external, violent and accidental means, of which (except in case of drowning or of internal injuries revealed by an autopsy) there shall be visible contusion or wound on the body, and that such death occurred within sixty days after such injury was sustained, as a direct result thereof, independently of any other cause, provided premiums have been duly paid, and that this policy is in force for its face amount and not running on extended or paid-up insurance, and no payment under the total and permanent disability provision has been made, the Company will, upon surrender of this policy, in lieu of all other benefits under this policy, pay to the beneficiary or beneficiaries under this policy, subject to the change of beneficiary clause, in addition to the face amount of the policy ($ 10,000.—) an additional accident indemnity of $ 10,000.— (making a total amount payable of $ 20,000.—) payable in instalments as hereinafter provided.

The said sum of $ 20,000.— shall be payable as follows:

One Thousand — Dollars ($ 1,000.—) shall be payable upon receipt at the Home Office of due proof of the accidental death of the Insured, as above defined, this policy being then in force, and beginning one month thereafter a series of Two Hundred and Forty (240) Monthly Instalments of One Hundred - Dollars ($ 100.—) each, aggregating with the first payment $ 19,000.— Dollars ($ 20,000.—), the first instalment to be paid immediately upon receipt of due proof of such death as required.

It is mutually agreed that this provision shall not cover self-destruction, whether sane or insane; death resulting from participation in aeronautics or submarine operations; death while the Insured is entered or engaged in military or naval service in time of war, or resulting directly or indirectly from such service, or from any work in connection with actual warfare, riot or insurrection, or any act incident thereto, either on land or water; death resulting from any violation of the law, or from police duty as a police organization; or death resulting directly or indirectly from bodily or mental infirmity, poisoning or infection, other than occurring simultaneously with and in consequence of bodily injury. The Company shall have the right and opportunity to view the body and make an autopsy, unless prohibited by law.

Attached to and forming part of Policy No. — 62065

on life of — Charles Leon Jenkins.

— October 6th, 1926.

Woodward
Secretary.

Crawford H. Ellis
President.

Witness:

16V

PAN-AMERICAN LIFE INSURANCE COMPANY

TOTAL AND PERMANENT DISABILITY BENEFIT

Charles Leon Jackson,

October 6th, 1930.

USE BLACK INK AS THIS IS TO BE PHOTOGRAPHED

APPLICATION, PART I

THE PAN-AMERICAN LIFE INSURANCE COMPANY OF NEW ORLEANS

PAN-AMERICAN LIFE INSURANCE COMPANY, NEW ORLEANS, U. S. A.

APPLICATION, PART II — STATEMENTS TO MEDICAL EXAMINER

GRACE IN PAYMENT OF PREMIUMS—

BENEFICIARY—

REINSTATEMENT—

ASSIGNMENT—

BENEFICIARY—

SELF-INSURANCE—

CONVERSION—

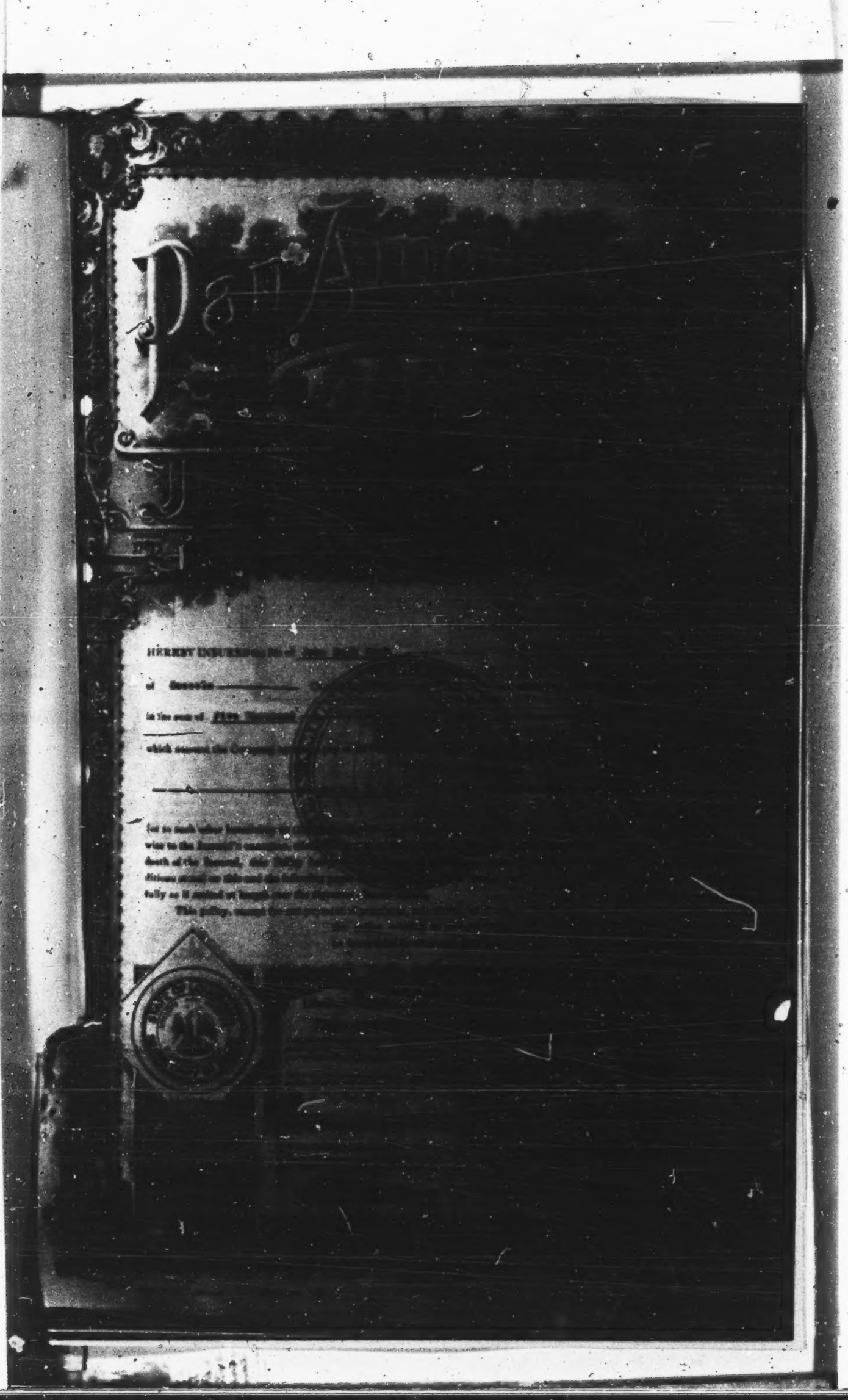
AGE—

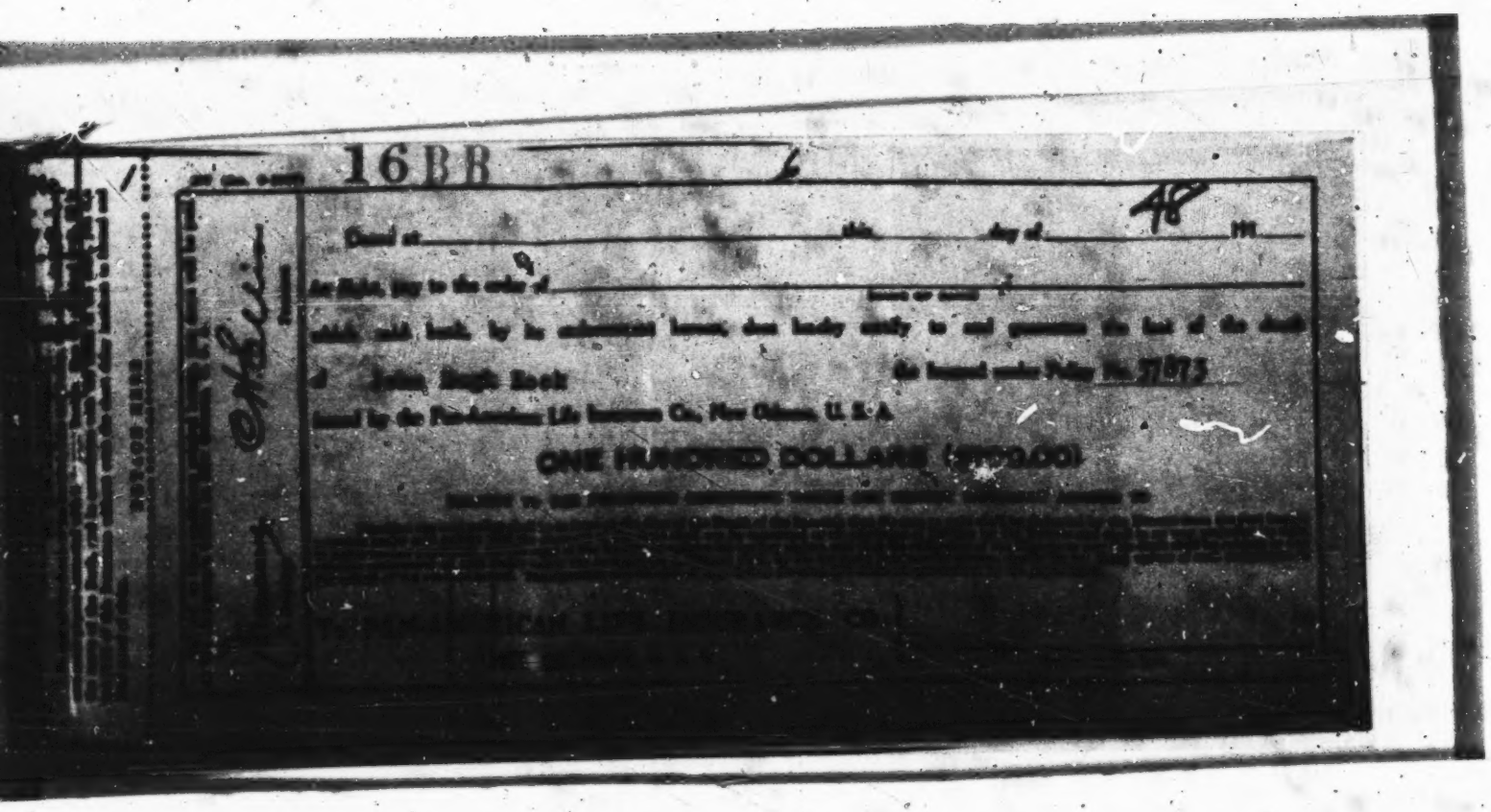
MILITARY AND NAVAL SERVICE—

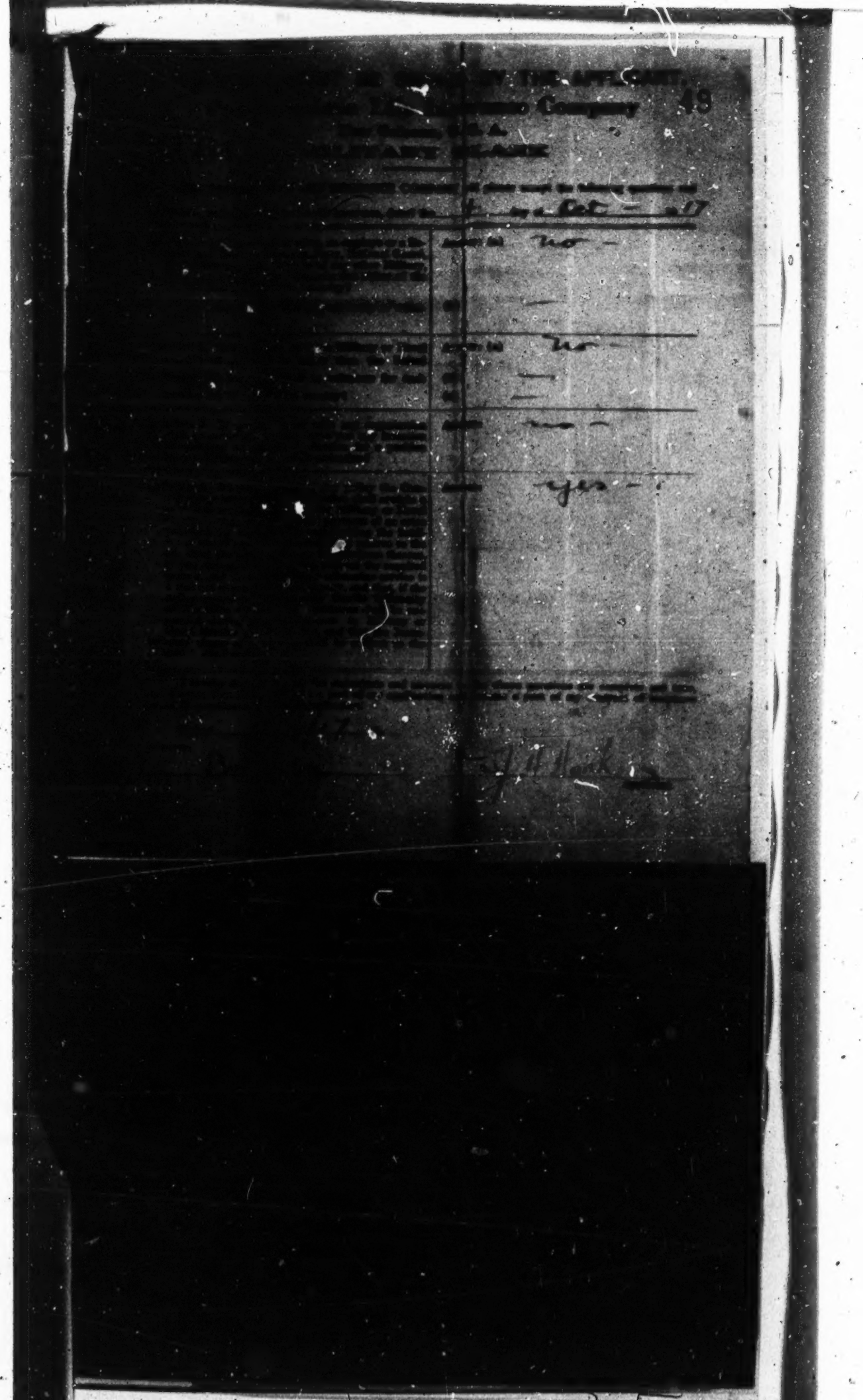
PROOFS OF DEATH—

PLACE OF PAYMENT—

[redacted]




16BB
ONE HUNDRED DOLLARS ($100.00)



§ 15111

John Hugh Hart

THE PAN-AMERICAN LIFE INSURANCE

of a policy on the Ordinary Life

for $ 5000 with premium of $ 1.25

payable annually to whomever

by occupation is that of Merchant & Cotton Buyer

is employed by Bryan & Hart

engaged in the Mercantile Ford & Cotton

My place of business is Osceola Ark

My residence is Osceola Ark

have lived at above place 18 years. Previous address Memphis Tenn

and Previous Business Osceola Ark

I was born at Crittenden County Alabama

on the 18 day of Nov 1876 My age at my nearest birthday is therefore 41 years.

Beneficiary Cattie B. Hart

Wife

Policy Number

I hereby agree that the policy issued hereon shall not take effect until the first premium has been paid during the continued good health and insurability of the proposed insured, and that all premiums are due and payable on the dates shown in the policy. I have not heretofore applied to or contracted by any Life Company for insurance on my life, except as stated herein, and no policy thereon is in force, or has been issued to me by any Life Company, except as stated herein. I have not had insurance declined, nor any policy withdrawn, modified or postponed by any Life Company, except as stated herein. I have not been rejected for insurance, or had any application for reinstatement declined, nor any policy of mine or in which I am interested, lapsed for non-payment of premium, except as stated herein. I have not been refused membership in any fraternal society, except as stated herein. I have not been engaged in any occupation classed as extra hazardous, except as stated herein. I have not been a resident of any country other than the United States, Canada or Europe, except as stated herein.

10/4/12

John Hugh Hart

AS APPLIED FOR APPLICATION No. 31505

hereby apply to

COMPANY OF NEW ORLEANS,

plan.

Ord Life 5000 1.25

Temp Prem 4.05

Total 5.30

Form 161 (Rev. 4-1912) APPLICATION—Part 2

MEDICAL EXAMINER'S REPORT

16 D IV

TO THE MEDICAL DIRECTOR OF THE PAN-AMERICAN LIFE INSURANCE COMPANY

FULL NAME OF APPLICANT John Hugh Hart

APPLICANT'S RESIDENCE Osceola Ark

NAME OF ABOVE REGISTERED EXAMINER Robert [illegible]

I. QUESTIONS TO BE ANSWERED BY APPLICANT IN PRESENCE OF EXAMINER

(The Examiner to put the questions and to set down the answers himself. Applicant to read and sign in the presence of the Medical Examiner.) N. B.—Ask questions 1 to 4 first, and record answers on the same life.

1. Personality. a. Exact date of birth? Nov 18 1876 b. Married, single or widower? Married c. Number of children living?

2. Insurance History. a. Has your life ever been insured in this Company?
b. Is your life now insured in other Companies?
c. Have you ever been declined or postponed by any Life Company?
d. Have you ever been declined by a Fraternal Society?
e. Is any application for other insurance pending?

3. Occupation and Employment. a. What is your present occupation?
b. What has been your occupation for past five years?
c. Are you a salaried employee? If so, state name of employer, nature of business, and salary?
d. Have you any other occupation or employment than stated above?
e. If so, state name of employer, nature of business, and salary?
f. How long have you been in your present employment?
g. Have you had any change of occupation or employment during the past five years?

4. Residence and Travel

FROM (Date)	TO (Date)	OCCUPATION	NAME AND ADDRESS	NATURE OF BUSINESS

a. Where else have you ever lived, and when? Memphis 1898 to 1904 — 1912 to date
b. Have you ever travelled in tropical climates? If so, when and where? No

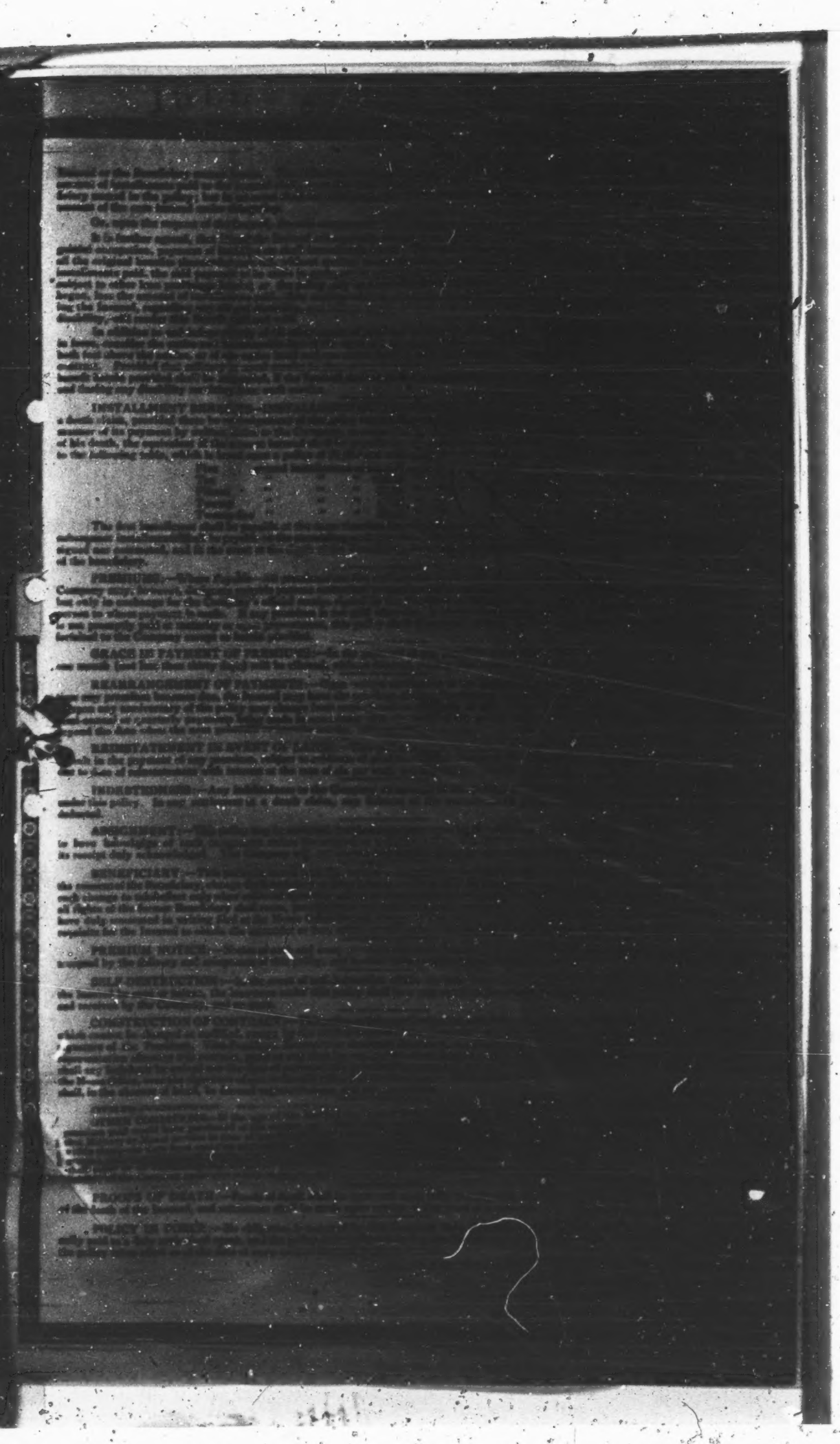
5. Family Record

	Age	Health	Cause of Death	Age at Death
Father		Dead		35
Mother	61	Living		
Brothers 1	37	Living	1 injured	
Sisters 1	39	Living		
Father's Father				38
Father's Mother				33
Mother's Father				74
Mother's Mother				72

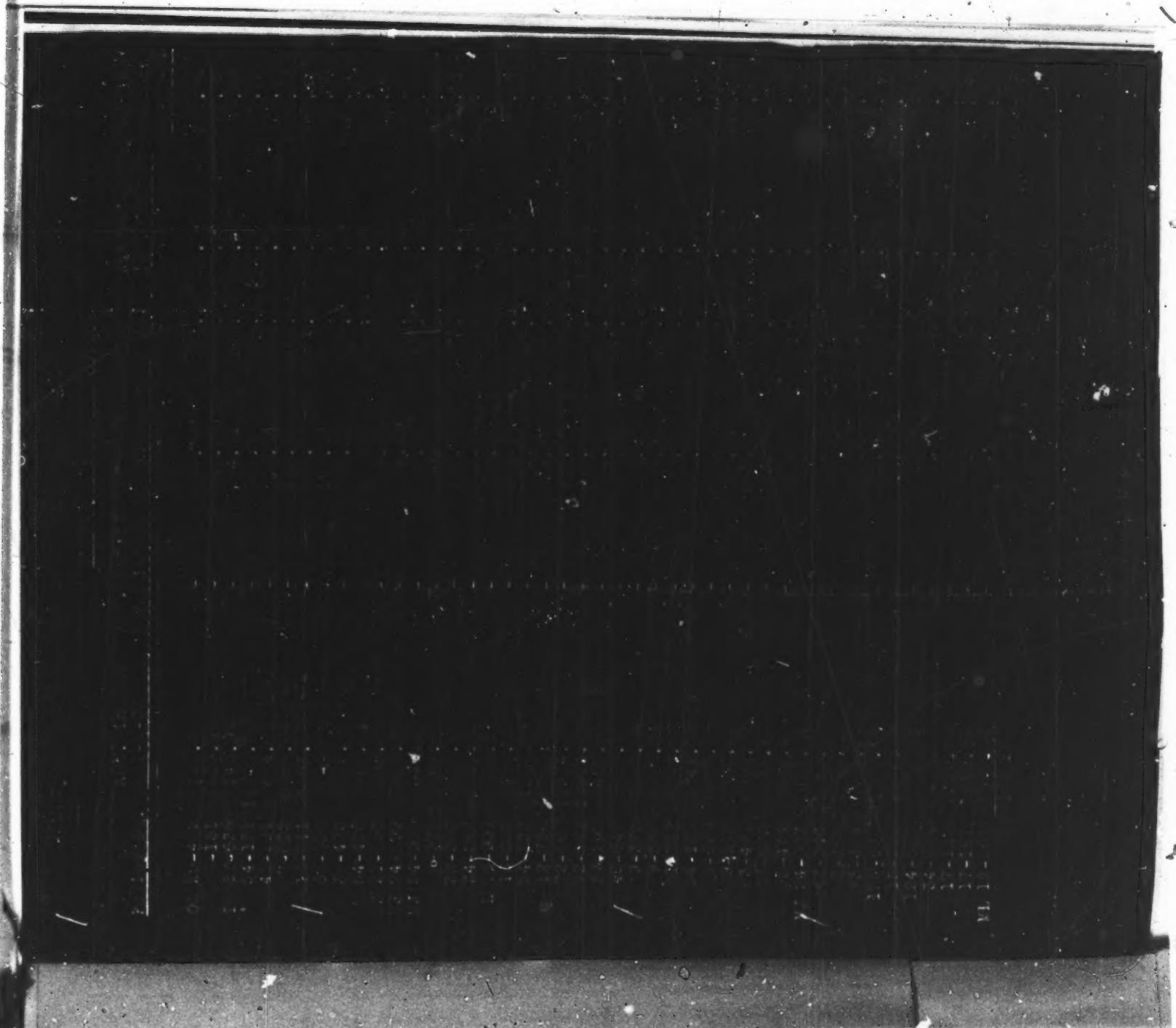
6. Health Record. Have you ever had or been told you had any of the following diseases?

Malaria	No	Kidney Trouble	No
Rheumatism or Gout	No	Bladder Trouble	No
Asthma	No	Venereal Disease	No
Hay Fever	No	Piles or Rectal Disease	No
Bronchitis	No	Hernia	No
Pneumonia	No	Appendicitis	No
Pleurisy	No	Gall Stones	No
Heart Disease	No	Diabetes	No
Stomach Trouble	No	Epilepsy	No
Liver Trouble	No	Nervous Disorder	No
Dyspepsia	No	Insanity	No
Tuberculosis	No	Cancer	No

Life Insurance for husband



REQUEST OF CHANGE OF BENEFICIARY



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54 Secretary, June 22 1922, Received

TRUST AGREEMENT

I hereby appoint the PAN-AMERICAN LIFE INSURANCE COMPANY Trustee of the proceeds of Policy No. 16049 issued by said Company on my life, as follows, to-wit:

Said Company shall receive as Trustee, from itself as insurer, the proceeds of said policy in case it shall become a claim by my death, and thereupon it shall be discharged from further liability on account of said policy, and it may mingle the sum so received with its general corporate funds as a part thereof.

Said Company, as Trustee, shall pay said proceeds and the interest credited thereon as hereinafter provided, to VIOLA SCOTT, (Beneficiary), my wife, if living, in monthly installments of FIFTY dollars each. The first monthly payment shall be made immediately upon receipt at its Home Office of due proof of my death, and subsequent payments of like amount shall be made monthly thereafter until the total of such payments, with a final payment to cover any fractional amount remaining unpaid, shall equal said proceeds together with any interest credited thereon as hereinafter provided.

Said Company, as Trustee, one year after receipt of due proof of my death, and annually thereafter, shall credit the balance of said proceeds remaining in its possession before the payment of the installment then due, with one year's interest at the rate of four and one-half per cent. (4½%).

In the event of the death of said Beneficiary, said Company, as Trustee, shall pay any balance of said proceeds remaining in its possession, to

The executors, administrators or assigns of
the Beneficiary,

in one sum, and thereupon any Trust entered into by said Company in respect to said policy under this appointment and all obligations of the Company hereunder shall terminate.

The benefits under said Trust shall not be transferable nor subject to commutation or incumbrance, nor shall said Company, as Trustee, or otherwise, pay or be liable to pay any benefits under said Trust to any person, firm or corporation except to said Beneficiary personally.

This appointment is made and delivered at the Home Office of said Company in the City of New Orleans, where said Trust is to be performed. All payments thereunder are to be made at said Home Office. Said Trust is to be subject to and governed by the laws of the State of Louisiana and not subject to or governed by the laws of any other place. It is further understood that the amount which is left in trust with the Company is the proceeds of a life insurance policy becoming a claim by the death of the insured, and that the benefits accruing under this Trust after the death of the insured shall not be transferable nor subject to commutation or incumbrance, nor to legal process.

If said Company accepts this Trust, this appointment and the Trust shall become null and void (a) if I shall revoke said appointment by written notice to said Company filed at its Home Office; (b) if I shall survive said beneficiary; (c) if any change is made in the Beneficiary or manner of payment of the proceeds of said policy; (d) if the said policy shall be surrendered for Cash Surrender Value; (e) if at my death the net sum payable under said policy shall be less than TWO THOUSAND Dollars.

Eug. Nolan
Witness

Samuel M. Scott
Insured.

ACCEPTED this 23rd day of June 1922,

PAN AMERICAN LIFE INSURANCE CO.

Secretary.

President.

Registrar.

EXHIBIT "H"

55

EXHIBIT "I"

TRUST FUND NO. 1

Policy No.	Amt. in Fund 1-1-33	Amt. Entering Fund in 1933	Interest	Total	Amt. Paid Out in 1933	Bal. in Fund on 12-31-33
* 16-049	3180.16	—	120.97	3301.33	600.00	2701.13
R 23-938	1333.80	—	55.30	1389.10	180.00	1209.10
68-169	1959.28	—	65.95	2025.23	720.00	1305.23
74-391	3767.22	—	170.99	3938.21	445.80	3492.41
82-127	211.65	—	19.35	231.00	231.00	—
89-308	7777.71	—	350.04	8127.75	900.00	7227.75
94-429	4683.76	—	174.47	4858.23	1210.80	3647.43
94-535	—	16113.49	—	16113.49	1470.20	14643.29
98-943	4.87	—	—	4.87	—	4.87
98-952	—	7906.66	—	7906.66	675.40	7231.26
107-841	3300.58	—	137.41	3437.99	650.00	2787.99
117-910	1978.86	—	89.05	2067.91	600.00	1467.91
118-801-2	12144.82	—	1090.43	13235.25	1105.20	12130.05
* 125-959	14892.04	—	656.64	15548.68	1200.00	14348.68
146-677	2720.24	—	119.27	2839.51	605.40	2234.11

* Exhibit H.

(Continued on Page 21)

(Exhibit "F" Continued)

Policy No.	Amt. in fund 1-1-33	Amt. Entering Fund in 1933	Interest	Total	Amt. Paid Out in 1933	Bal. in Fund on 12-31-33
148-002	4947.50	—	557.71	5505.21	900.00	4605.21
148-502	3311.30	—	152.30	3463.60	900.00	2563.60
150-918	3595.33	—	136.36	3731.69	847.56	2884.13
156-753	366.98	—	6.45	373.43	357.35	16.08
168-895	8788.04	—	395.46	9183.50	645.34	8538.16
171-104	—	5000.00	—	5000.00	800.00	4200.00
192-078-9	3550.00	—	139.50	3689.50	900.00	2789.50
200-989	3942.31	—	177.40	4119.71	605.40	3514.31
201-016	—	9898.88	—	9898.88	200.00	9698.88
136-823-4	10107.36	435.24	—	10542.60	—	10542.60
	$96563.81	$39354.27	$4615.05	$140533.13	$16749.45	$123783.68
* 123-997	.20	—	—	.20	—	.20
	$96564.01	$39354.27	$4615.05	$140533.33	$16749.45	$123783.88

* Exhibit H.

56 TRUST AGREEMENT

The net proceeds of Policy No. 5-639, shall, upon due proof of the death of the Insured filed at the Home Office, be retained by the Company, improved with interest as hereinafter provided, and together with the accrued interest thereon be paid to the beneficiary or beneficiaries hereinafter designated, as follows:

To Exilda Anna Carlos, born November 20th, 1916, daughter of the Insured, hereinafter called the Beneficiary, if living on November 20th, 1946, in the following manner:

(a) If the said Beneficiary be living at the death of the Insured prior to November 20th, 1946, and if the said Beneficiary shall have then reached her twenty-first birthday, the interest to be credited on said net proceeds shall be paid to her monthly, the first payment to be made one month after the death of the Insured and monthly thereafter up to November 20th, 1946 when the said net proceeds shall be payable to her and when so paid to her all obligations under the said policy shall terminate; until the said Beneficiary reaches her twenty-first birthday, the interest to be credited on said net proceeds shall be paid to Marie Gertrude Carlos, born December 8th, 1905, daughter of the Insured, if living, who is hereby authorized to receive and receipt for the said interest installments due the said Beneficiary.

(b) If the said Beneficiary shall survive the Insured but shall die prior to November 20th, 1946, then immediately upon due proof of her death the said net proceeds together with the accrued interest, if any, shall be paid to her Executors or Administrators in one lump sum and all obligations under this policy shall terminate.

The said net proceeds shall bear interest at the rate of 3½% per annum on funds remaining in the Company's

possession at the end of each year. The first interest credit shall be made one year after the date of death of the Insured, and after the first interest year there shall also be added as additional interest thereon each year thereafter, such amount as may be determined by the Directors of the Pan-American Life Insurance Company and apportioned annually from the surplus earnings of the said Company for the preceding year.

But in no event shall the total sum payable hereunder to all beneficiaries, whether payable in installments or lump sum settlement exceed the net proceeds of said policy due at the death of the Insured, together with the interest to be credited thereon as hereinabove provided and when the total amount of installment shall equal said proceeds and interest as when the balance of said proceeds and interest shall be paid in one lump sum as hereinabove provided, then all of the obligations of the said Company in respect to said policy and under this agreement shall terminate.

The sums due hereunder shall not be transferable nor subject to commutation by any beneficiary, nor shall the Company be required to pay the sums due any beneficiary to any person, firm or corporation, other than such beneficiary personally.

This agreement is made and delivered at the Home Office of the Company in the City of New Orleans, Louisiana, where all sums due hereunder shall be payable, and all the conditions herein stipulated relative to the payment of the said proceeds and interest shall be performed in said State and shall be subject to and governed by the laws of the State of Louisiana, and shall not be subject to or governed by the laws of any other place.

This agreement shall be attached to and shall form a part of said policy, which policy, except as herein otherwise provided shall remain in full force and effect, but

this agreement shall become null and void (a) if any change is made in the beneficiary, or in the manner of payment of said proceeds, providing such change is endorsed upon said policy in accordance with the requirements of the policy; (b) if the said policy be surrendered for its Cash Surrender Value; (c) if the Insured shall assign the said policy and a copy of such assignment shall be filed with the Company at its Home Office; (d) if the Insured shall survive all beneficiaries herein designated; (e) if at the death of the Insured the net sum payable under said policy shall be less than ONE THOUSAND Dollars.

Chas. J. Mintz
Witness.

Robert Louis Carlos
Insured.

ACCEPTED this 4th day of March 1929.

PAN-AMERICAN LIFE INSURANCE CO.

A. B. Westerfield
Assistant Secretary.

E. G. Simmons
Vice-President.

J. McVay Powers
Registrar.

EXHIBIT "J".

TRUST FUND NO. 2

Policy No.	Amt. in Fund 1-1-33	Amt. Entering Fund in 1933	Interest	Total	Amt. Pd. Out in 1933	Bal. in Fund on 12-31-33
5-639-40	1954.08	20.00	20.00	1994.08	20.40	1973.68
57-177	3135.00	—	141.07	3276.07	—	3276.07
62-551	—	10000.00	—	10000.00	—	10000.00
156-754	—	2000.00	—	2000.00	—	2000.00
110-332-3	9767.49	—	96.81	9864.30	182.50	9681.80
160-491	—	385.03	—	385.03	—	385.03
	$14856.57	$12405.03	$257.88	$27519.48	$202.90	$27316.58

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EXHIBIT "K"

58 INSTALLMENT CERTIFICATE

WHEREAS, Policies Nos. 223-313, 230-261, 231-568 and 231-569 of the undersigned PAN-AMERICAN LIFE INSURANCE COMPANY, of New Orleans, Louisiana, issued on the life of Robert F. Sirera, of New Orleans, Louisiana, have become claims by the death of the Insured on February 20th, 1933 and have been approved by the undersigned as death claims against it; and

Whereas, under the terms of the said policies the net proceeds thereof are payable to Mrs. Elizabeth B. Sirera in one lump sum and the said net proceeds are as follows:

Amount of Policy No. 223-313	$1,000.00	
Less balance second annual premium due 9-8-32	20.62	$ 979.38
Amount of Policy No. 230-261		1500.00
Amount of Policy No. 231-568		1500.00
Amount of Policy No. 231-569		1000.00
	Total Proceeds	$4979.38

and

WHEREAS, the said Mrs. Elizabeth B. Sirera desires the proceeds of said policies paid in monthly installments of $50.00 each for a period of 120 months, the first installment payable April 1st, 1933 and the first of each month thereafter; and

WHEREAS, the present value of the said installments is $4,962.00 and the said Mrs. Elizabeth B. Sirera desires the excess of said proceeds over the value of the said installments, to-wit:: $17.38 paid her in cash;

NOW, THEREFORE, in consideration of the delivery and the surrender to it for cancellation of the said Policies

Nos. 223-313, 230-261, 231-568 and 231-569, the Pan-American Life Insurance Company, instead of paying the combined proceeds of said policies in one lump sum, by mutual agreement with the said Mrs. Elizabeth B. Sirera promises to pay to the said Mrs. Elizabeth B. Sirera, at its Home Office in New Orleans, Louisiana, an initial payment of $17.38 and thereafter monthly installments of $50.00 beginning first day April, 1933, until a total of one hundred and twenty such monthly installments have been paid.

In the event of the death of the said Mrs. Elizabeth B. Sirera before the one hundred and twenty monthly installments have been paid to her, the Company agrees to continue to pay the unpaid installments as they fall due to Mary Lou Sirera and Robert F. Sirera, Jr., children of said Mrs. Elizabeth B. Sirera, if living, share and share alike, otherwise to the survivor. In the event of the death of Mrs. Elizabeth B. Sirera and the said Mary Lou Sirera and Robert F. Sirera, Jr. before the one hundred and twenty installments have been paid, any unpaid installments shall be commuted at the rate of three and one-half per cent interest per annum and paid in one lump to the Executors or Administrators of the last surviving payee. During the minority of the said Mary Lou Sirera and Robert F. Sirera, Jr. any installments due them shall be paid to their duly appointed tutors or guardians.

No assignment or transfer of the benefits hereunder shall be valid or binding on the undersigned, nor shall the sums due hereunder be subject to commutation by the said Mrs. Elizabeth B. Sirera or the said Mary Lou Sirera and Robert F. Sirera, Jr. nor shall the Company be required to pay the said sums due to any person, firm or corporation, other than the said payees personally, or to the duly authorized tutors or guardians of said children, if minors.

This agreement is made and delivered at the Home Office of the Pan-American Life In-

surance Company in the City of New Orleans, Louisiana, where all sums due hereunder shall be paid, and all the conditions herein stipulated relating to the said sums shall be performed in said State and shall be subject to and governed by the laws of the State of Louisiana, and shall not be subject to or governed by any other state.

IN WITNESS WHEREOF the Pan-American Life Insurance Company has caused this Certificate to be executed this 21st day of March 1933.

PAN-AMERICAN LIFE INSURANCE COMPANY

By_____
Vice-President

Attest:

_____
Assistant Secretary

EXHIBIT "L"

Policy No.	Amt. in Fund 1-1-33	Amt. Entering Fund in 1933	Interest	Total	Amt. Paid Out in 1933	Bal. in Fund on 12-31-33
(223-313						
(230-261						
(231-568-9	—	4962.00	160.98	5122.38	450.00	4672.98

EXHIBIT "M"

61 June 23, 1936, Received A. F. Bell

PAN-AMERICAN LIFE INSURANCE COMPANY

New Orleans, Louisiana.

INSTALLMENT CERTIFICATE

WHEREAS, Mr. James F. Chauvain has applied for the respective Cash Values of policies #108-454 and #108-455, of the undersigned Pan-American Life Insurance Company of New Orleans, Louisiana, issued on the lives of Mary Elizabeth Chauvain, Insured, and Mr. James F. Chauvain, Nominator, and,

WHEREAS, under the terms of the said policies the combined Cash Value amounting to ONE THOUSAND SEVEN HUNDRED AND FORTY-SIX DOLLARS ($1,746.00) are payable to Mrs. James F. Chauvain in one lump sum, and,

WHEREAS, the said Mr. James F. Chauvain desires the said Cash Value payable to him in forty equal monthly installments.

NOW, therefore, in consideration of the delivery and the surrender to it for cancellation of the said policies #108-454 and #108-455, the Pan-American Life Insurance Company, instead of paying the combined Cash Values of the said policies in one lump sum, by mutual agreement with the said Mr. James F. Chauvain, promises to pay to the said Mr. James F. Chauvain at its Home Office in New Orleans, Louisiana, an initial payment of FORTY SIX DOLLARS AND FIFTY-FOUR CENTS ($46.54) on the seventh day of September, 1932, and thereafter a like sum on the seventh day of each successive month (except that no monthly installments shall be payable during the months of July and August of each year) until a total of forty payments have been made.

In the event of the death of the said Mr. James F. Chauvain before the forty payments have been made to him, the Company agrees to continue to pay the unpaid installments as they fall due to Mary Elizabeth
62 Chauvain, and in event of the deaths of both the said Mr. James F. Chauvain and the said Mary Elizabeth Chauvain before the forty payments have been made, any unpaid payments shall be commuted at the rate of three and one-half percent interest per annum and paid in one lump sum to the Executors or Administrators of the last surviving payee.

No assignment or transfer of the benefits hereunder shall be valid or binding on the undersigned, nor shall the sums due hereunder be subject to commutation by the said Mr. James F. Chauvain or the said Mary Elizabeth Chauvain nor shall the company be required to pay the said sums due Mr. James F. Chauvain to any person, firm or corporation, other than the said Mr. James F. Chauvain personally.

This agreement is made and delivered at the Home Office of the Pan-American Life Insurance Company in the City of New Orleans, Louisiana, where all sums due hereunder shall be paid, and all the conditions herein stipulated relative to the said sums shall be performed in said State and shall be subject to and governed by the Laws of the State of Louisiana, and shall not be subject to or governed by any other state.

IN WITNESS HEREOF the Pan-American Life Insurance Company has caused this Certificate to be executed this 7th day September 1932.

PAN-AMERICAN LIFE INSURANCE COMPANY

Attest:

B. O. Vria
Assistant Secretary.

By: E. G. Simmons

EXHIBIT "N"

Policy No.	Amt. in fund 1-1-33	Amt. Entering Fund in 1933	Interest	Total	Amt. Paid Out in 1933	Bal in fund on 12-31-33
108-454-5	1579.10	—	40.28	1619.38	465.40	1153.98

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EXHIBIT "O"

64 U. S. Board of Tax Appeals

Filed at Hearing Nov. 29, 1937

Pan American Life Insurance Company
Petitioner

v. Docket No. 84,638

Commissioner of Internal Revenue
Respondent

SUPPLEMENTAL STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties through their respective counsel that the following additional facts may be taken as true:

I.

That petitioner withdraws and abandons the assignment of error contained in subparagraph (B) of paragraph IV of its petition as to depreciation on furniture and fixtures, and agrees to the depreciation as determined by the Respondent and set out in the deficiency notice.

New Orleans, Louisiana, _____ 1937.

(s) Solomon S. Goldman

(s) Edwin J. Prinz
Counsel for Petitioner.

(s) J. P. Wenchel
Counsel for Respondent.

Pan-American Life Insurance Company,
Petitioner,

v.

Commissioner of Internal Revenue,
Respondent.

Docket No. 84638. Promulgated December 23, 1938.

1. Where petitioner, a life insurance company, issued policies of combined life, health, and accident insurance, and some of the policies contained premium waiver benefits in case of total and permanent disability and others contained both premium waiver benefits and monthly income benefits in case of total and permanent disability, it is *held*, that a reserve for incurred but not yet accrued disability benefits embracing both premium waiver and monthly income benefits held by petitioner at the beginning and end of the taxable year comes within the term "reserve funds required by law" as that term is used in section 203 (a) (2) of the Revenue Act of 1932.

2. Where, under two types of ordinary life policies issued by petitioner, the insured either contracted or later elected to have the insurance paid to the beneficiary in installments rather than a lump sum at death, it is *held*, that petitioner is not entitled, under section 203 (a) (8) of the Revenue Act of 1932, to deduct as interest paid on its indebtedness an amount added in the taxable year as interest to the funds held on deposit under such policies to make payments of future installments due under the terms of the policies. *Penn Mutual Life Insurance Co. v. Commissioner*, 92 Fed. (2d) 962, followed.

3. Where petitioner and the insured have entered into a trust agreement providing that at death the net pro-

ceeds of the policy are to be retained by petitioner, improved with interest at 3½ percent, which interest is to be paid to the beneficiary until a designated date, at which time the principal is also to be paid to the beneficiary, it is *held*, that petitioner is entitled under section 203 (a) (8) of the Revenue Act of 1932 to deduct the amount of interest actually paid to the beneficiary during the taxable year.

Eugene J. McGivney, Esq., Solomon S. Goldman, Esq., and *Edwin J. Prinz, Esq.*, for the petitioner.
Allen T. Akin, Esq., for the respondent.

This proceeding is for the redetermination of a deficiency in income tax for the taxable year 1933
66 in the amount of $4,245.10. The issues remaining for decision after certain concessions made by both parties are as follows:

(1) Is petitioner entitled under section 203 (a) (2) of the Revenue Act of 1932 to deduct from its gross income an amount equal to 3¾ per centum of the mean of its reserve for incurred but not yet accrued disability benefits held at the beginning and end of the taxable year?

(2) Is petitioner entitled under section 203 (a) (8) of the Revenue Act of 1932 to deduct from its gross income, as "interest paid or accrued within the taxable year on its indebtedness," the amounts, hereinafter more fully described, of $9,282.31 and $257.88, in connection with certain ordinary life policies, and trust agreements, respectively?

The concessions made by petitioner consist simply of the withdrawal and abandonment of certain assignments of error relating to depreciation of furniture and fixtures and to the deductibility of 3¾ per centum of the mean of two reserves, namely, a reserve for supplementary contracts and a reserve for policies upon which a surrender value may be demanded. The concessions made by the re-

spondent consist of admissions in his brief that petitioner is entitled under section 203 (a) (8) of the Revenue Act of 1932 to deduct from its gross income, as "interest paid or accrued within the taxable year on its indebtedness," the amounts of $4,615.05, $160.98, and $40.28 in connection with certain trust agreements and installment certificates other than the policies and trust agreements referred to in issue (2) above. These concessions made by the respondent and petitioner will be given effect under Rule 50.

FINDINGS OF FACT

Petitioner is a life insurance company, incorporated under the laws of the State of Louisiana, with its principal office in the city of New Orleans. Its taxable year 1933 is the calendar year 1933. More than 50 per centum of its total reserve funds held during the taxable year were held for the fulfillment of its life insurance and annuity contracts. Among the states in which it transacted business during the taxable year were Louisiana, Oklahoma, Indiana, and Illinois.

During the taxable year petitioner issued life insurance policies some of which carried additional provisions relating to certain non-cancelable benefits in case the insured became totally and permanently disabled by accident or disease. These noncancelable benefits, for which in each case the insured obligated himself to pay an additional premium, were of two kinds—(1) waiver of
67 premiums by petitioner in case of total and permanent disability, and (2) both waiver of premiums and payment of monthly income by petitioner in case of total and permanent disability.

Policies which carried additional provisions relating to waiver of premiums only, in case the insured became totally and permanently disabled, provided in part that:

PAN-AMERICAN LIFE INSURANCE COMPANY . . . Hereby Agrees, that upon receipt by the Company . . . of due proof . . . that the Insured has, while said policy . . . are in full force and prior to the anniversary date of said policy nearest to the sixtieth birthday of the Insured, become totally disabled, as the result of bodily injury or disease occurring after the issuance of said policy, so as to be wholly and continuously prevented thereby from engaging in his own or any other business or occupation and from performing any work for compensation or profit . . . and that such disability has already continued uninterruptedly for a period of at least six months (such disability of such duration being deemed to be permanent only for the purpose of determining the commencement of liability hereunder), the Company during the continuance of such disability will waive the payment of each premium under said policy . . . beginning with the premium, the due date of which next succeeds the date of commencement of such disability, provided that no premium shall be waived the due date of which is more than one year prior to the date of receipt at the Home Office of the Company of written notice of claim hereunder. . . . Notwithstanding that proof of disability may have been accepted by the Company as satisfactory, the Insured shall at any time, on demand from the Company, furnish due proof of the continuance of such disability, but after such disability shall have continued for two full years, the Company will not demand such proof more often than once in each subsequent year.

Policies which carried provisions relating to both waiver of premiums and payment of monthly income in case the insured became totally and permanently disabled carry substantially the same provision as above and in addition another provision which reads as follows:

2. Pay to the insured . . . a monthly income of $10 for each $1,000 of face amount of said policy . . . such monthly income to be paid for each completed month of such continuous disability beginning with the fourth such

month, provided, however, that in no case shall any monthly income be paid for the first three months of disability nor for any fractional part of a month of disability, nor for any period of disability more than one year prior to the date of receipt at the Home Office of the Company of written notice of claim hereunder. . . . Notwithstanding that proof of disability may have been accepted by the Company as satisfactory, the Insured shall at any time, on demand from the Company, furnish due proof of the continuance of such disability, but after such disability shall have continued for two full years, the Company will not demand such proof more often than once in each subsequent year.

During the taxable year petitioner maintained a reserve for unpaid and unresisted claims incurred under these disability provisions, which is referred to herein as the "Reserve for Incurred Disability Benefits", in the amounts set forth in the following table:

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	Beginning of year	End of year
Reserve for premium waiver benefits	$93,375.27	$113,674.60
Reserve for monthly income benefits	217,875.64	265,240.76
Total	311,250.91	378,915.36

The mean of the above reserve amounts to $345,088.13, and 3¾ per centum thereof equals $12,940.62.

The purpose of the reserve for incurred disability benefits is to enable petitioner to pay the benefits which have occurred but which have not yet become due. It is based upon a table which shows the rates of death and recovery from disability. The name of this table is "Hunter's Rate of Termination of Disability on Disabled Lives." The man-

ner of setting up the reserve is to set up the present value of the probable future benefits. This is done by discounting the probable future benefits (either the waiver of premiums or both the waiver of premiums and the payment of a monthly income) at 3½ per centum compound interest, and reducing that amount with the aid of Hunter's table by the probability of the insured living and still being totally and permanently disabled on the premium due date. This manner of setting up the reserve for incurred disability benefits does not differ from the manner in which reserves are set up on noncancelable health and accident insurance policies. The provisions in the policies which carried the noncancelable disability benefits involve life contingencies and differ from provisions of supplemental contracts which involve no life contingency. The reserve for incurred disability benefits is set up only in those policies where the insured has sustained total and permanent disability, and the waiver of premiums or both the waiver of premiums and the payment of a monthly income, depending upon the type of policy, is subject in all cases to the continuance of such disability. The amount in the reserve at the beginning and end of the taxable year is reconciled as follows: To the reserve at the beginning of the year, add the present value of probable future benefits on claims incurred during the year, less reserves released on recoveries during the year, plus compound interest at 3½ per centum per annum. The recoveries occur either by the death of the person who is disabled or by his actually recovering from his disability.

The reserve for incurred disability benefits held by petitioner at the beginning and end of the taxable year was required by the laws of the States of Oklahoma (secs. 10501 and 10502, Oklahoma Statutes, 1931; title 36, secs. 184 and 185, Oklahoma Statutes Annotated) and Illinois (sec. 10, Acts of 1869 as amended in 1907 and 1919; ch. 73, sec. 331, Illinois Revised Statutes, 1935; ch. 73, sec. 221, Smith-Hurd Illinois Annotated Statutes; repealed by Act of 1937, June 29, Laws 1937, p. 696, sec. 453, effective July 1, 1937), two of

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the states in which petitioner transacted business during the taxable year.

The source of the reserve was premium payments and income from the investments thereof.

Facts relating to interest question.—(We omit from these findings that part of the stipulation which relates to interest deductions which respondent has conceded in his brief.)

Petitioner held deposits under the following terms of supplementary contracts, trust agreements, and installment certificates: Ordinary life monthly income policies in which the policy provides for a lump sum payment at death and for a series of 240 monthly installments; and ordinary life policies, providing for installment settlements selected by the insured, payable over a period of from five to twenty-five years.

Petitioner held deposits under *both* types of policies above mentioned, with respect to which it was stipulated:

That the funds held on deposit under such policies on the first day of 1933 was $270,164.83 and that $6,575.56 entered the fund in 1933 and that petitioner added interest of $9,282.31 to the said fund in 1933, which interest was computed at 3½% per annum, making the total fund $286,022.70, and paid out of said fund $27,353.31, leaving $258,669.39 in the fund on the last day of 1933 as shown by schedule annexed hereto and made a part hereof and marked Exhibit "G".

It was also stipulated that petitioner held deposits under certain trust agreements as follows:

* * * * *

(c) Trust Agreements, entered into by the Insured, for the deposit of the proceeds of the policy with petitioner, in which petitioner agrees that the said net proceeds shall

bear interest at the rate of 3½% per annum on funds remaining in the Company's possession at the end of each year, under which agreements the interest was payable to the Beneficiary until a designated date and then the principal sum is payable to the Beneficiary.

That form of such Trust Agreement is attached hereto and made a part hereof and marked Exhibit "J."

That the fund held on deposit under such Trust Agreements on the first day of 1933 was $14,856.57 and that $12,405.03 entered the fund in 1933 and that petitioner added interest of $257.88 to the said fund in 1933, which interest was computed at 3½%, making a total of $27,519.48 and paid out of said fund $202.90, leaving $27,316.58 in the fund on the last day of 1933 as shown by schedule attached hereto and made a part hereof and marked Exhibit "K".

* * * * *

The exhibits referred to in the stipulation are not copied in these findings of fact, but are incorporated herein by reference.

70 OPINION.

BLACK: The first question for decision is whether petitioner is entitled to deduct from its gross income an amount equal to 3¾ per centum of the mean of its reserve for incurred disability benefits held at the beginning and end of the taxable year. The applicable statute is the Revenue Act of 1932, the material provisions of which are set out in the margin.[1]

1SEC. 201. TAX ON LIFE INSURANCE COMPANIES.

(a) DEFINITION.—When used in the title term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.

* * * * * * *

SEC. 203. NET INCOME OF LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—In the case of a life insurance company the term "net income" means the gross income less—

* * * * * * *

(2) RESERVE FUNDS.—An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ per centum shall be substituted for 4 per centum. . . .

Petitioner is a "life insurance company" as that term is defined in section 201 (a). The policies with respect to which the reserve in question was held were "contracts of combined life, health, and accident insurance." Under all of these policies the insured agreed to pay a certain annual premium in consideration for petitioner agreeing to pay the insured's beneficiary a sum certain upon receipt of due proofs of death of the insured. In some of the policies the insured agreed to pay a small additional premium in consideration for petitioner agreeing to waive the future payment of premiums in case the insured became totally and permanently disabled as the result of bodily injury or disease; and in some of the policies the insured agreed to pay a larger additional premium in consideration for petitioner agreeing not only to waive the future payment of premiums as they became due, but also to pay the insured a stated monthly income in case the insured became totally and permanently disabled as the result of bodily injury or disease. To meet its future unaccrued and contingent obligations under these combined life, health, and accident policies, petitioner set up and held at the beginning and end of the taxable year several reserve funds. Its largest reserve was a reserve to meet the purely death claims as and when they matured. This reserve is a part of the reserve for outstanding policies and annuities, reported on line 1, schedule A, of petitioner's income tax return. Another reserve was a reserve to meet its future unaccrued and contingent obligation to waive
71 premiums or to waive premiums and to pay a monthly income, depending upon the type of policy, in case of total and permanent disability where the insured had not yet become disabled. This reserve is a part of the reserve for disability and accidental death benefits, reported on line 2 of schedule A of petitioner's return. The statutory per centum of the mean of the two last mentioned reserves was deducted by petitioner and allowed by respondent as "reserve funds required by law", and those reserves are not involved in this proceeding. They constitute a larger part of petitioner's reserves "required by

law." Another reserve reported by petitioner on line 3 of schedule A of petitioner's return was for supplementary contracts. This reserve petitioner concedes is a solvency reserve and that petitioner is entitled to no deduction by reason thereof. The fourth reserve, which is the one here involved, was set up by petitioner and held to meet its future unaccrued and contingent obligation to waive premiums or to waive premiums and to pay a monthly income, depending upon the type of policy, in cases of total and permanent disability where the insured had already become disabled. This reserve is the reserve for incurred disability benefits, reported by petitioner on line 4 of schedule A in the amounts of $311,250.91 and $378,915.36, respectively, and is subdivided according to the benefits reserved for, as follows:

	Beginning of year	End of year
Reserve for premium waiver benefits	$93,375.27	$113,674.60
Reserve for monthly income benefits	217,875.64	265,240.76
Total	311,250.91	378,915.36

This reserve for incurred disability benefits did *not* include any amount for benefits which had already *accrued* in favor of the disabled insured. Such latter amounts would represent pure liabilities of petitioner and the reserve set up therefor would be in the nature of a solvency reserve and not a reserve "required by law" as that term is used in section 203 (a) (2) of the Revenue Act of 1932. Cf. *Maryland Casualt, Co. v. United States*, 251 U. S. 342, as modified by *United States v. Boston Insurance Co.*, 269 U. S. 197. It included only amounts held for the payment of benefits which would become due in the future, providing the insured survived and remained disabled.

At the time petitioner filed its income tax return for the

year 1933 the respondent's regulations (art. 971, Regulations 77) held that the type of reserve here in-
72 volved was a reserve required by law. The pertinent provisions of these regulations are set out in the margin.[2] Substantially the same provisions were contained in all of the regulations issued under all of the revenue acts beginning with the Revenue Act of 1921. See article 681 of Regulations 62, 65, and 69, and article 971 of Regulations 74. "Items 7-11 of the liability page of the annual statement" referred to in the regulations are also set out in the margin.[3] These items correspond with lines 1 to 5, respectively, of "Schedule A—Reserve Funds" contained in the blank income tax return for life insurance companies, form 1120 L. Item 10 of the liability page of the annual statement is the item petitioner relied upon at the time it filed its return as authority for deducting 3¾ per centum of the mean of the reserve for incurred disability benefits held at the beginning and end of the taxable year.

Shortly after the Court of Claims handed down its decision in *Continental Assurance Co.* v. *United States*, 8 Fed. Supp. 474, the respondent issued Regulations 86

2ART. 971. Tax-exempt interest and reserve funds.—Under paragraphs (1) and (2) of section 203 (a), life insurance companies are entitled to deduct from gross income:

* * * * * * *

(2) Four per cent of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ per cent shall be substituted for 4 per cent. The reserve deduction is based upon the reserves required by express statutory provisions or by the rules and regulations of the State insurance departments when promulgated in the exercise of a power conferred by statute; but such reserves do not include assets required to be held for the ordinary running expenses of business nor do they include the reserve or net value of risks reinsured in other solvent companies to the extent of the reinsurance.

* * * * * * *

. . . A company is permitted to make use of the highest aggregate reserve called for by any State in which it transacts business, but the reserve must have been actually held as shown by the annual statement. Generally speaking, the following will be considered reserves as contemplated by the law: Items 7-11 of the liability page of the annual statement for life insurance companies . . .

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3 7. Net Reserve (i. e. the net present value of all the outstanding policies in force on the 31st day of December, 19.., as computed by the..... on the following tables of mortality and rates of interest) $_____

8. Extra reserve for total and permanaent disability benefits, $_____, and for additional accidental death benefits, $....., included in life policies..... $_____

9. Present value of amounts not yet due on supplementary contracts not involving life contingencies computed by the..... $_____

10. Present value of amounts incurred but not yet due for total and permanent disability benefits ..... $_____

11. Liability on policies canceled and not included in "net reserve" upon which a surrender value may be demanded..... $_____

under the Revenue Act of 1934. Although section 203 (a) (2) of the Revenue Act of 1934, so far as material here, was the same as similar provisions in all the prior revenue acts beginning with the Revenue Act of 1921, the respondent in article 203 (a) (2)-1 Regulations 86 omitted all reference to items 7-11 of the liability page of the annual statement for life insurance companies and held, among other things, that the reserve funds required by law did *not* include "estimated value of future premiums which have been waived on policies after proof of total and permanent disability." There after, the Supreme Court handed down its decision in *Helvering* v. *Inter-Mountain Life Insurance Co.*, 294 U. S. 686, in which it cited with approval *Continental Assurance Co. v. United States, supra.* The respondent then issued Treasury Decision 4615. (Cumulative Internal Revenue Bulletin XIV—2, p. 310), in which he amended article 681 of Regulations 62, 65, and 69, and article 971 of Regulations 74 and 77, to read the same, as far as material here as article 302 (a) (2)-1 of Regulations 86, *supra.* Since then the Supreme Court has decided *Helvering* v. *Illinois Life Insurance Co.*, 299 U. S. 88.

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The respondent, in support of his contention that the term "reserve funds required by law" in section 203 (a) (2), *supra*, does not include the reserve for incurred disability benefits here in question, relies upon his regulations as amended by T. D. 4615, *supra*, and the decision of *New York Life Insurance Co.* v. *Edwards*, 271 U. S. 109 (point 3), *Helvering* v. *Inter-Mountain Life Insurance Co.*, *supra*, and *Helvering* v. *Illinois Life Insurance Co.*, *supra.*

Although not a conclusive test, it is, nevertheless, a prerequisite to the allowance of any deduction under section 203 (a) (2), *supra*, that the reserve in question be required, as expressed by the respondent, in his regulations, either by "express statutory provisions or by the rules and regulations of the State insurance departments when promulgated in the exercise of a power conferred by statute."

Cf. *McCoach* v. *Insurance Co. of North America*, 244 U. S. 585; *Maryland Casualty Co.* v. *United States*, *supra*; *United States* v. *Boston Insurance Co.*, *supra*; *New York Life Insurance Co.* v. *Edwards*, *supra*; *Helvering* v. *Inter-Mountain Life Insurance Co.*, *supra*; and *Helvering* v. *Illinois Life Insurance Co.*, *supra*. And the respondent concedes in his regulations that a company is permitted to make use of the highest aggregate reserve called for by any state in which it transacts business. Petitioner transacted business in Louisiana, Oklahoma, Indiana, and Illinois. As stated in our findings of fact, the reserve in question was required by the laws of Oklahoma, cf. *In re Oklahoma National Life Insurance Co.*, 68 Okla. 219; 173 Pac. 376, and until July 1, 1937, by the laws of Illinois.

The petitioner having met successfully the prerequisite stated in the preceding paragraph, the question at issue, at least as far as premium waiver benefits are concerned, is identically the same as the issue relating to the reserve for incurred disability benefits in the recent case of *Monarch Life Insurance Co.*, 38 B. T. A. 716. In that case we held that the reserve for incurred disability benefits (apparently involving premium waiver benefits only) was a reserve fund required by law and that the petitioner there was entitled to deduct from its gross income an amount equal to 3¾ per centum of the mean of such a reserve fund held at the beginning and end of the taxable year. It follows that, at least as far as premium waiver benefits are concerned, the instant proceeding is controlled by our holding in *Monarch Life Insurance Co.*, *supra*. Cf. *Equitable Life Assurance Society of the United States* (reserve for unpaid and unresisted accident and health claims), 33 B. T. A. 708, 711.

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Regarding that portion of the reserve for incurred disability benefits involving monthly income benefits, we know of no reason why it should be treated any differently from that portion of the reserve involving premium waiver benefits. The policies involving both kinds of benefits are

substantially the same, except that in those involving both premium waiver and monthly income benefits the insured agrees to pay a larger additional premium than the insured pays in those policies involving premium waiver benefits only. We hold that both portions of the reserve for incurred disability benefits involved herein should be treated alike and that petitioner is entitled to deduct from its gross income the amount of $12,940.62 set out in our findings as representing 3¾ per centum of the mean of the reserve for incurred disability benefits held at the beginning and end of the taxable year.

Before passing this question, however, we wish to say that we have carefully considered the respondent's contentions and find ourselves unable to concur in the belief that the effect of the holdings in the *New York Life* case, the *Inter-Mountain Life* case and the *Illinois Life* case is to exclude the present reserve from the classification of "reserve funds required by law" as that phrase is used in section 203 (a) (2) of the Revenue Act of 1932.

In the *New York Life* case, *supra*, the Supreme Court was not satisfied from the evidence that the reserve there involved in point (3) was required by the laws of New York. Neither was there anything to show how the value of the contractual benefits under the policies was arrived at. Under those circumstances the Court said: "The company has not shown enough to establish its right to the exception." The proof lacking in the *New York Life* case has been supplied in the instant proceeding.

The reserve funds involved in the other two cases were in the nature of solvency reserves and were essentially different from the one which we are now considering. For instance, the reserve in the *Inter-Mountain* case, *supra*, was against matured, unsurrendered, unpaid coupons, and was not essentially an insurance reserve. Inter-Mountain's liability thereon depended upon no contingency. The insured there at any time could have withdrawn the ma-

tured coupons in cash. Likewise, in the *Illinois*
75 *Life* case, *supra*, the reserve for survivorship investment funds was not a reserve set aside to mature or liquidate any future unaccrued and contingent claims. Illinois Life was bound at the end of 20 years to discharge a definite liability consisting of the total contributions to the fund plus the interest it had agreed to pay. The reserve set up to meet this definite liability was in substance nothing more than a solvency reserve.

Neither do we think the Supreme Court in the *Inter-Mountain* and *Illinois Life* cases intended to construe the phrase "reserve funds required by law" to mean only the reserve funds relating to *life* insurance. It seems to us that the structure of the act requires a recognition of other reserves. Sec. 201 (a), *supra*, defines the term "life insurance company" as one "engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds." In this definition there can be no doubt but that Congress intended the term "reserve funds" to apply to "contracts of combined life, health, and accident insurance" as well as to "life insurance and annuity contracts." Therefore, it would seem to follow that the term "reserve funds" in section 203 (a) (2) would also apply to "contracts of combined life, health, and accident ininsurance," which is the type of policies involved in the instant proceeding. Any other construction of the act would be inconsistent with the respondent's allowance of the statutory per centum of the mean of the reserve for disability and accidental death benefits reported on line 2 of schedule A of the return and briefly referred to at the beginning of this opinion. The only difference between that reserve and the one for incurred disability benefits is that in the latter the disability has already taken place. But the insured must survive and remain disabled on each and every anniversary date of the policy before any actual liability accrues against petitioner.

Interest question.—As we have already stated, respondent in his brief concedes that petitioner is entitled to deduct the interest items covered by paragraphs (b), (d), and (e) of the stipulation. He contests the deduction of those included in paragraphs (a) and (c) of the stipulation. These latter have been described in our findings of fact.

The second question, therefore, for decision falls into two subdivisions—(1) whether petitioner is entitled to deduct $9,282.31 as interest in connection with two types of its ordinary life policies, and (2) whether petitioner is entitled to deduct $257.88 as interest in connection with the type of trust agreements referred to in our findings of fact. The applicable statute is the Revenue Act of
76 1932, the material provisions of which are set out in the margin.[4] We shall first consider the deductibility of the so-called interest in connection with the two types of petitioner's ordinary life policies.

The first type of policy provides for a lump sum payment at death and for a series of 240 monthly installments. A copy of one of these policies is attached to the stipulation. It provides for a lump sum payment of $500 at death and for a series of 240 monthly installments of $50 each, aggregating in all $12,500. The commuted value of this policy is $9,200. The policy contains a provision that at any time before his death the insured may elect to have the commuted value paid at his death in one lump sum rather than a first payment of $500 followed by a series of 240 monthly installments of $50 each. But if no such election is made by the insured, the beneficiary can neither assign nor commute the installments therein provided for.

The second type of policy simply provides for one lump sum payment at death unless the insured during his life

[4] SEC. 203. NET INCOME OF LIFE INSURANCE COMPANIES.
(a) GENERAL RULE.—In the case of a life insurance company the term "net income" means the gross income less—
* * * * * * *
(8) INTEREST.—All interest paid or accrued within the taxable year on its indebtedness . . .

time shall elect to have the insurance paid to the beneficiary in any one of the equal annual installments from five to twenty-five years provided for in that paragraph of the policy headed "Installment Benefits—Installment Settlements." A copy of one of these policies is also attached to the stipulation. It provides for a lump sum payment at death of $5,000, or for either 5, 10, 15, 20, or 25 equal annual installments, providing the insured so elected during his lifetime. In all of the policies of the second type that are here involved the insured had so elected. Assuming that in the case of the sample policy of this type referred to above the insured had elected to have the insurance paid in 20 equal annual installments, the beneficiary of this policy would receive 20 equal annual installments of $339.90 (5 times $67.98) aggregating in all $6798, instead of the lump sum of $5,000 payable at death which was originally provided for. As in the first type of policy, if the insured in the second type of policy died after electing to have the insurance paid in equal annual installments, the beneficiary could not thereafter either assign or commute the installments therein provided for.

Petitioner contends that in the first type of policy the difference between the commuted value of $9,200 and the aggregate payments of $12,500, or $3,300, and in the second type of policy the difference between the commuted value of $5000 and the aggregate payments
77 of $6,798 or $1,798, represents interest on its indebtedness which it is entitled to deduct as and when it is paid to the beneficiary. As soon as a policy of either type becomes a death claim, petitioner deposits the commuted value of that policy in a separate fund, which fund on a gradually declining basis is improved with interest at the rate of 3½ per centum per annum so that the commuted value plus the interest will exactly equal the aggregate installments paid to the beneficiary. At the beginning of the taxable year petitioner had on deposit $270,164.83 in connection with about 34 policies embracing both types here under discussion. During the year the fund was

increased by $6,575.56, due to the death of one of petitioner's policyholders of the first type. Also during the year the fund deposited in connection with the 44 policies was improved with interest in the amount of $9,282.31 and during the year there was paid to beneficiaries a total amount of $27,353.31. It is the $9,282.31 which petitioner contends it is entitled to deduct as interest paid on its indebtedness. It bases this contention partly upon the ground that the only reserve fund for which it has received a deduction under section 203 (a) (2) (see footnote No. 1, *supra*) is a reserve fund (included in the reserve for outstanding policies and annuities) set up to meet only the commuted value of the policies in question upon the death of the insured. At the time petitioner filed its return it also claimed a deduction under section 203 (a) (2) for the statutory percentage of the mean of a reserve for supplementary contracts, reported on line 3 of schedule A of petitioner's return. Included in this reserve were amounts set up to meet the difference between the commuted value and the aggregate payments to be made under the two types of ordinary life policies now under discussion. This deduction was disallowed by the respondent upon the ground that the reserve for supplementary contracts did not come within the term "reserve funds required by law" as that term is used in section 203 (a) (2). This action on the part of the respondent was originally assigned as error by the petitioner, with an assignment of error in the alternative "that if it is not entitled to a deduction of 3¾ percent of the mean reserve funds on Supplementary Contracts . . . it should be allowed to deduct all interest paid, credited or accrued on the said reserve funds under Sec. 203 (a) (8) of the Revenue Act of 1932." At the hearing petitioner withdrew and abandoned its main assignment of error as to the reserve funds on supplementary contracts and relied solely on its alternative assignment of error that it was entitled to a deduction for alleged interest in the above amount of $9,282.31, upon the authority of *Great Southern Life Insurance Co.*, 33 B. T. A. 512, issue (b) (1); affirmed upon other issues, 89 Fed. (2d)

54; certiorari denied, 302 U. S. 698. The question
78 here under consideration, we think is not the same as that we decided in *Great Southern Life Insurance Co., supra*. The issue referred to by petitioner is issue (b) (I) in the latter case, wherein the taxpayer claimed a deduction from its gross income of the amount disbursed by it as interest on coupons which were theretofore left to accumulate with the company at interest and were surrendered during the taxable year and principal and interest were paid thereon. We held that under such circumstances the interest was deductible. We cited a regulation of the Commissioner which specifically covered the subject and allowed the deduction of interest paid under such circumstances. But we have not that issue in the instant case. One that would be somewhat comparable to it is where the insured dies and the beneficiary voluntarily leaves the proceeds of the policy on deposit with the insurance company and it agrees to pay interest thereon. We held in *Penn Mutual Life Insurance Co.*, 32 B. T. A. 839, that in such a case the insurance company is entitled to deduct the guaranteed rate of interest which is paid to the beneficiaries. That sort of interest the Commissioner concedes is deductible. The exact issue now before us was decided unfavorably to the instant petitioner's contentions in *Penn Mutual Life Insurance Co., supra* (assignment of error No. (1), syllabus No. 2). Our decision in *Penn Mutual* was affirmed as to all contracts made or options exercised for installment settlements *prior* to the death of the insured, but was remanded as to all options for installment settlements *exercised by the beneficiary after* the death of the insured. *Penn Mutual Life Insurance Co.* v. *Commissioner*, 92 Fed. (2d) 962, 967, 968. All the contracts or options for installment settlements involved in the two types of ordinary life policies now under consideration were all made or exercised by the insured prior to the death of the insured, and are, therefore, ruled by that part of the Third Circuit's decision wherein it concluded, p. 968:

We hold, therefore, that the portion of the respective sums of $211,254.60 and $238,640.01, which in fact rep-

resent the 3 per cent. annual interest included in the installment settlements paid to beneficiaries by the petitioner under the Trust Certificate policy or under an option of the Ordinary Life policy exercised prior to the death of the insured, is not interest on indebtedness within the terms of the statute and cannot be deducted by the petitioner from its gross income. We sustain the ruling of the Board in so far as it relates to such payments.

Counsel for petitioner in his briefs recognizes that the decision in *Penn Mutual* is contrary to the petitioner's contention in the instant proceeding, but contends that the Board of the Circuit Court misapprehended the facts in that case and that the issue there should be distinguished from the issue here. We have considered this contention of petitioner, but we think we should abide by our previous decision as affirmed by the Third Circuit.

79 We hold, therefore, that petitioner is not entitled under section 203 (a) (8) of the Revenue Act of 1932 to deduct from its gross income as "interest paid or accrued within the taxable year on its indebtedness" the amount of $9,282.31 which it added during the taxable year to its deposits held under both types of ordinary life policies here involved. *Penn Mutual Life Insurance Co.* v. *Commissioner, Supra.* Cf. *Penn Mutual Life Insurance Co.*, 32 B. T. A. 876 (part I).

Regarding the deductibility of $257.88 as interest in connection with the type of trust agreement attached to the stipulation as exhibit "J", the respondent contends that under *Massachusetts Mutual Life Insurance Co.* v. *United States*, 288 U. S. 269, no more interest may be allowed as a deduction to a life insurance company than that actually paid during the taxable year; and that in any event no amount is allowable as interest for the reason that petitioner has failed to show that no part of the amount of $257.88 is actually and in fact dividends under that part of the specimen trust agreement reading:

. . . and after the first interest year there shall also be added as additional interest thereon each year thereafter, such amount as may be determined by the Directors of the Pan-American Life Insurance Company and apportioned annually from the surplus earnings of the said Company for the preceding year.

The respondent, however, in effect concedes that if it were not for the above quoted provision of the trust agreement, any interest actually paid under the trust agreement of this type would be deductible under our decision in *Great Southern Life Insurance Co., supra.*

In making the contention relative to the above quoted provision of the trust agreement, we think the respondent has overlooked that part of the trust agreement immediately preceding the above quoted provision which provides that: "The said net proceeds shall bear interest at the rate of 3½% per annum on funds remaining in the Company's possession at the end of each year" and also that part of the stipulation which provides that the amount of $257.88 was computed at 3½ per centum. Whatever effect, if any, the above quoted provision relied upon by the respondent might have in another taxable year, we are satisfied from the record before us that it has no effect whatever in the present taxable year. Since the entire amount of $257.88 in question was computed at 3½ per centum it is clear that this amount did not contain any so-called "additional interest" to be determined by petitioner's directors and to be apportioned from petitioner's surplus earnings for the preceding year. It is, therefore, our opinion that petitioner is entitled to deduct as interest that part of the $257.88 that was actually
80 paid out during the taxable year. The stipulation says that the amount paid out was $202.90. *Massachusetts Mutual Life Insurance Co.* v. *United States, supra; Great Southern Life Insurance Co., supra.*

We, therefore, hold that in connection with the type of trust agreement attached to the stipulation as exhibit "J" petitioner is entitled under section 203 (a) (8) of the Revenue Act of 1932 to deduct $202.90 as interest paid during the taxable year on its indebtedness. Cf. *Edith M. Kinnear*, 20 B. T. A. 718.

The deficiency should be redetermined in accordance with this report.

Decision will be entered under Rule 50.

81 UNITED STATES BOARD OF TAX APPEALS

Washington

PAN AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v. Docket No. 84638

COMMISSIONER OF INTERNAL REVENUE
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion of the Board promulgated December 23, 1938, the respondent herein having on January 24, 1939, filed a recomputation and the petitioner having on January 30, 1939, filed an acquiescence therein, now therefore, it is

ORDERED AND DECIDED: That there is a deficiency in income tax for the year 1933 in the amount of $1,775.63.

(s) J. RUSSELL LEECH,
Member

Enter:

ENTERED

FEB. 2, 1939.

82 United States Board of Tax Appeals

Filed Apr. 14, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of Internal Revenue
Petitioner on Review,

v. B. T. A. Docket No. 84638

PAN-AMERICAN LIFE INSURANCE COMPANY
Respondent on Review.

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

NOW COMES Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, James W. Morris, Assistant Attorney General, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and John W. Smith, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

JURISDICTION

THAT the Petitioner on Review, hereinafter referred to as the Commissioner, is the duly appointed, qualified and Acting Commissioner of Internal Revenue, holding his office by virtue of the laws of the United States; THAT the Respondent on Review, the Pan American Life Insurance Company, hereinafter referred to
83 as the taxpayer, is a corporation, incorporated under the laws of the State of Louisiana with its

principal office in the City of New Orleans, Louisiana.

THAT the taxpayer executed and filed a Federal income tax return (Form 11201) for the calendar year 1933, with the Collector of Internal Revenue for the Louisiana District, New Orleans, Louisiana, whose office is within the jurisdiction of the Honorable Court.

THAT the Court in which the review of the cause is sought is the United States Circuit Court of Appeals for the Fifth Circuit.

II.

NATURE OF CONTROVERSY

The nature of the controversy is as follows, to-wit:

The petitioner was licensed to issue policies of combined life, health, and accident insurance, and was so engaged during the calendar year 1933 in the States of Louisiana, Oklahoma, Indiana and Illinois.

The taxpayer filed annual statements for the calendar year 1933, with the various State insurance departments, on forms adopted by the National Convention of Insurance Commissioners. Said statement sets forth the reserve funds it was required, pursuant to State laws, to maintain in order to obtain a license to transact business and to keep the company in a sound financial condition, able to meet all of its policy obligations. During the calendar year 1933 the following reserve funds were maintained:

84	Beginning of Year	End of Year
Reserve for premium waiver benefits	$93,375.27	$113,674.60
Reserve for monthly income benefits	217,875.64	265,240.76
Total	$311,250.91	$378,915.36
		311,250.91
		$690,166.27
Mean of reserve disallowed		$345,083.13
3¾% of mean, deducted on return, but disallowed by Commissioner		$ 12,940.62

Taxpayer claimed that the items appearing in the above table were insurance reserves required by law, and deducted $12,940.62 from its gross income for the calendar year 1933.

On February 29, 1936, the Commissioner mailed to the aforesaid taxpayer a notice of deficiency in Federal income taxes for the calendar year 1933, in the amount of $4,245.10. In arriving at said deficiency the Commissioner determined that the two reserve funds itemized were not true insurance reserves within the meaning of Section 203 (a) (2) of the Revenue Act of 1932, 47 Stat. 169, but were liability or solvency reserves not peculiar to life insurance companies.

On May 25, 1936, the taxpayer filed an appeal with the United States Board of Tax Appeals from the deficiency aforesaid, alleging that the said two reserve funds were insurance reserves required by law within the meaning of Section 203 (a) (2), *supra*. The Commis-
85 sioner filed his answer on June 25, 1936. The proceeding came on for hearing before the Board on November 29, 1937, at New Orleans, Louisiana.

On December 23, 1938, the Board promulgated its opinion wherein it held that the two reserve funds itemized above constituted "reserve funds required by law" and were a proper basis for computing the deduction allowed by Section 203 (a) (2), *supra*. On February 2, 1939, the Board entered its final order of redetermination wherein and whereby it ordered and decided that there was a deficiency of $1,775.63 for the calendar year 1933. The deficiency determined resulted from concessions made by the taxpayer with respect to certain assignments of error relating to depreciation of furniture and fixtures and to the deductibility of 3¾ per centum of the mean of two reserves, namely, a reserve for supplementary contracts and a reserve for policies upon which a surrender value may be demanded; in addition to the Board's approval of the Commissioner's determination that the in-

terest allowed by the taxpayer on two types of ordinary life policies and deducted from gross income for the calendar year 1933 as interest paid, did not constitute "interest paid on indebtedness" within the meaning of Section 203 (a) (8), of the Revenue Act of 1932, *supra*.

III.

ASSIGNMENTS OF ERROR

The Commissioner being aggrieved by the conclusions of law contained in the decision of the United
86 States Board of Tax Appeals and by its final order redetermining a deficiency in Federal income taxes for the calendar year 1933 in the amount of $1,775.63 desires to obtain a review by the United States Circuit Court of Appeals for the Fifth Circuit.

The Commissioner assigns the following errors intended to be argued:

1. The Board erred in holding and deciding that the reserves maintained by the taxpayer at the beginning and end of the calendar year 1933, for "premium waiver benefits" constituted a "reserve fund required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932, *supra*.

2. The Board erred in holding and deciding that the reserves maintained by the taxpayer at the beginning and end of the calendar year 1933 for "monthly income benefits" constituted a "reserve fund required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932, *supra*.

3. The Board erred in holding and deciding that each of the reserve funds itemized in assignments (1) and (2), formed a proper basis for computing the deduction allowed by Section 203 (a) (2) of the Revenue Act of 1932, *supra*.

4. The Board erred in entering its final order of redetermination that there is due from the taxpayer a deficiency in income tax for the calendar year 1933, in the amount of $1,775.63.

87 5. The Board erred in failing and refusing to enter a final order of redetermination that there is due from the taxpayer a deficiency in income tax for the calendar year 1933, in the amount of $4,245.10.

6. The Board erred in that its decision is not supported by the evidence and is contrary to law.

WHEREFORE the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Fifth Circuit, that a transcript of record be prepared in accordance with the rules of said court and transmitted to the Clerk of said court for filing, and that proper action be taken to the end that the errors complained of may be reviewed by said court.

(s) James W. Morris
Assistant Attorney General

J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

OF COUNSEL:
John W. Smith,
Special Attorney,
Bureau of Internal Revenue.

JWS/mtr 2/8/39

88 UNITED STATES OF AMERICA)
) ss.
DISTRICT OF COLUMBIA)

JOHN W. SMITH, being duly sworn, says that he is a Special Attorney in the Bureau of Internal Revenue and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

(s) John W. Smith
Special Attorney,
Bureau of Internal Revenue.

Sworn and subscribed to before me
this 8 day of March, 1939.

(s) George W. Kilis
Notary Public.

My commission expires Nov. 15, 1942.

89 United States Board of Tax Appeals

Filed Apr. 29, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner on Review,

v. B. T. A. Docket No. 84638

PAN-AMERICAN LIFE INSURANCE COMPANY,
Respondent on Review.

NOTICE FOR FILING PETITION FOR REVIEW

To: Pan-American Life Insurance Company,
1208 Whitney Bank Building,
New Orleans, Louisiana.

You are hereby notified that the Commissioner of Internal Revenue did, on the 14th day of April, 1939, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Fifth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 14th day of April, 1939.

J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assign-

ments of error mentioned therein, is hereby acknowledged this 17th day of April, 1939.

(s) Pan American Life Insurance Co.
Per F. Hinderman,
Counsel for Respondent on Review.
Treasurer.

JWS/cm 4/13/39

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90 United States Board of Tax Appeals

Filed Apr. 29, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner on Review,

v. B. T. A. Docket No. 84638

PAN-AMERICAN LIFE INSURANCE COMPANY
Respondent on Review.

NOTICE OF FILING PETITION FOR REVIEW

To: Eugene J. McGivney, Esq.,
1340 Canal Bank Building,
New Orleans, Louisiana.

You are hereby notified that the Commissioner of Internal Revenue did, on the 14th day of April, 1939, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Fifth Circuit, of

the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignment of error as filed is hereto attached and served upon you.

Dated this 14th day of April, 1939.

(Signed) J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 24 day of April, 1939.

(s) Eugene J. McGivney
Counsel for Respondent on Review.

JWS/cm 4/13/39

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91 U. S. Board of Tax Appeals

Filed April 27, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PAN AMERICAN LIFE INSURANCE COMPANY,
Petitioner on Review,

v. B. T. A. Docket No. 84638

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent on Review.

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit.

NOW COMES Pan American Life Insurance Company, by its attorneys, Eugene J. McGivney, Solomon S. Goldman and Edwin J. Prinz, and files this petition for a review by the United States Circuit Court of Appeals for the Fifth Circuit, of the decision of the United States Board of Tax Appeals rendered on February 2, 1939, determining deficiencies in income taxes of petitioner for the year 1933, amounting to the sum of $1775.63; and in support of said petition respectfully shows to the Court:

I.

JURISDICTION

THAT petitioner, Pan American Life Insurance Company, is a Louisiana corporation with its principal office in the Whitney National Bank Building, New Orleans, Louisiana; that it executed and filed a Federal income tax return (Form 1120L) for the calendar year 1933, with the Collector of Internal Revenue for the Louisiana District, New Orleans, Louisiana, whose office is within the jurisdiction of this Honorable Court.

92 THAT the Court in which the review of this cause is sought is the United States Circuit Court of Appeals for the Fifth Circuit.

II.

NATURE OF CONTROVERSY

The nature of the controversy is as follows, to-wit:

Petitioner is engaged in the business of issuing life insurance policies.

THAT this petition for review is limited to the adverse ruling of the Board of Tax Appeals on petitioner's claim for a deduction from its income of $9,281.31 actually paid by it to beneficiaries as interest at the rate of 3½% per annum on proceeds of matured:

> Ordinary Life Monthly Income Policies in which the policy provides for a lump sum payment at death and for a series of 240 monthly installments; and on Ordinary Life Policies providing for installment settlements, selected by the insured, payable over a period of from five to twenty-five years

which proceeds were deposited with petitioner at the death of the insured.

THAT the findings of fact of the Board of Tax Appeals shows:

> "That the funds held on deposit under such policies on the first day of 1933, was $270,164.83 and that $6575.56 entered the fund in 1933 and that petitioner added interest $9282.31 to the said fund in 1933, which interest was computed at 3½% per annum, making the total fund $286,022.70, and paid out of said fund $27,353.31, leaving $258,669.39 in the fund on the last day of 1933, as shown by schedule annexed hereto and made a part hereof and marked Exhibit 'G' ".

That petitioner claims the said deposit creates an indebtedness to beneficiaries under the terms of said policies and that petitioner is entitled to deduct from its income said interest under the terms of said policies and that petitioner is entitled to deduct from its income said interest under the provisions of Sec-

93

tion 203 (a) (8) of the Revenue Act of 1932, allowing life insurance companies to deduct:

> "All interest paid or accrued within the year on its indebtedness * * ".

THAT the Board of Tax Appeals holds where the insured, rather than the beneficiary, elected that the proceeds should be deposited and paid in installments, the deposit of such proceeds does not create an indebtedness within the meaaning of Section 203 (a) (8) of the Revenue Act of 1932.

III.

ASSIGNMENTS OF ERROR

THAT petitioner, Pan American Life Insurance Company, being aggrieved by the conclusion of law contained in the decision of the United States Board of Tax Appeals on petitioner's said claim for a deduction from petitioner's income of interest on the said deposits made with it under its said policies, and by the final order redetermining a deficiency in Federal income taxes for the calendar year 1933 in the amount of $1775.63, desires to obtain a review by the United States Circuit Court of Appeals for the Fifth Circuit.

Petitioner assigns the following errors intended to be argued:

1. That the said Board erred in holding and deciding that the funds held by petitioner under matured policies of the type referred to did not represent an indebtedness due by petitioner to beneficiaries and that the interest, at the rate of 3½% per annum, added by petitioner to such funds in its possession and included in, and
94 actually paid in 1933 to beneficiaries, was not deductible, under Section 203 (a) (8) of the Revenue Act of 1932, as interest paid.

2. That the Board erred in entering its final order of redetermination that there is due from petitioner a deficiency in income tax for the calendar year 1933, in the amount of $1,775.63.

3. That the said Board erred in failing and refusing to enter a final order of redetermination that no deficiency in income taxes for the calendar year 1933 was due by petitioner.

4. That the said Board erred in that its decision is not supported by the evidence and is contrary to law.

WHEREFORE, Pan American Life Insurance Company petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Fifth Circuit; that a transcript of record be prepared in accordance with the rules of said Court and transmitted to the Clerk of said Court for filing, and that proper action be taken to the end that the errors complained of may be reviewed by said Court.

Eugene J. McGivney

Solomon S. Goldman

Edwin J. Prinz
Attorneys for Pan American Life Insurance Company, Petitioner.

Address:
1340 Canal Bank Bldg.
New Orleans, La.

95 UNITED STATES OF AMERICA
PARISH OF ORLEANS
STATE OF LOUISIANA

EUGENE J. McGIVNEY being duly sworn says that he is Vice-President and General Counsel of the Pan American Life Insurance Company and attorney of record in this cause and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; and that said petition is true of his knowledge except as to the matters therein alleged on information and belief, and as to those matters, he believes it to be true.

Eugene J. McGivney

Sworn to and subscribed before me
this 26th day of April, 1939.

Henry G. Neyrey Jr.
Notary Public.

My Commission expires at Death.

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96 United States Board of Tax Appeals

Filed Apr. 29, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PAN AMERICAN LIFE INSURANCE COMPANY,
Petitioner on Review.

v. B. T. A. Docket No. 84638

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent on Review,

NOTICE OF FILING PETITION FOR REVIEW

To: J. P. Wenchel, Esq.,
Chief Counsel,
Bureau of Internal Revenue,
Washington, D. C.

You are hereby notified that the Pan American Life Insuranace Company did, on the 27th day of April, 1939, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals, for the Fifth Circuit, of the decision of the Board heretofore rendered in the above entitled case. A copy of the petition for review and Assignments of Error as filed is attached hereto and served upon you.

Dated this 27th day of April 1939, at New Orleans, La.

Eugene J. McGivney
Attorney for Pan American Life
Insurance Company.

Address:
1340 Canal Bank Bldg.
New Orleans, La.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 28th day of April, 1939.

J. P. Wenchel
Counsel for Respondent on Review.

97 U. S. Board of Tax Appeals
Filed May 25, 1939

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner on Review.

v. B. T. A. Docket No. 84638

PAN-AMERICAN LIFE INSURANCE COMPANY,
Respondent on Review.

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner on Review.

v. B. T. A. Docket No. 84639

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent on Review.

ORDER

Pursuant to motion of the parties, and good cause appearing therefore, it is hereby ordered:

THAT the motion is granted as made, and that the causes appearing in the caption hereof are hereby directed to the consolidated herein for briefing, hearing, argument and decision upon a single consolidated transcript of record, consisting of such portions of the record made before the United States Board of Tax Appeals as the parties herein may indicate by their joint praecipe for record.

AND IT IS FURTHER ORDERED that the Clerk of this Court transmit to the Clerk of the Board of Tax Appeals a certified copy of this order to be by him incorporated in the record on appeal as certified and transmitted by him to this Court.

(s) RUFUS E. FOSTER
United States Circuit Judge.

Dated: This 23 day of May, 1939.

98 UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit do hereby certify that the foregoing three pages, numbered from 1 to 3, inclusive, contain a true copy of the joint motion and order to consolidate the causes for briefing, hearing, argument and decision upon a single record

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, Petitioner

versus

PAN-AMERICAN LIFE INSURANCE COMPANY, Respondent.

— — —

PAN-AMERICAN LIFE INSURANCE COMPANY, Petitioner.

versus

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, Respondent, as the same remains upon files and records of said United States Circuit Court of Appeals.

(SEAL) IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 23rd day of May, A. D. 1939.

(s) Oakley F. Dodd,
Clerk U. S. Circuit Court of
Appeals for the Fifth Circuit.

99 United States Board of Tax Appeals

Filed June 2, 1939

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner on Review.

v. B. T. A. Docket No. 84638

PAN-AMERICAN LIFE INSURANCE COMPANY,
Respondent on Review.

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner on Review.

v. B. T. A. Docket No. 84638

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent on Review.

STIPULATION RE: TRANSCRIPT OF RECORD

WHEREAS each of the parties hereto has filed a petition for review by the United States Circuit Court of Appeals for the Fifth Circuit of the decision of the United States Board of Tax Appeals heretofore rendered in the above-entitled causes:

NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties that the Clerk of the Board of Tax Appeals shall prepare, certify and transmit to the said Circuit Court of Appeals for the Fifth Circuit only one transcript of record on such petitions for review; such transcript to include all records of proceedings, and papers included in the joint praecipe therefor of the parties with this stipulation.

100 IT IS FURTHER STIPULATED that the cost of certifying and of printing the combined

record shall be allocated between the parties on the basis of the portion of the combined record taken by each party, to-wit: 60% to the Commissioner of Internal Revenue and 40% to the taxpayer.

(Signed) J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Eugene J. McGivney,
Attorney for Taxpayer.

JWS/cm 5/10/39

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101 United States Board of Tax Appeals
Lodged June 2, 1939

United States Board of Tax Appeals
Filed June 5, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PAN-AMERICAN LIFE INSURANCE COMPANY
Petitioner on Review,

v. B. T. A. Docket No. 84638

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent on Review.

STATEMENT OF EVIDENCE

This cause came on for hearing before the Hon. Eugene Black, Member of the United States Board of Tax Appeals, on November 29, 1937, there being present the petitioner and respondent by their respective counsel.

The cause was heard on stipulation of facts and oral testimony. All of the oral evidence introduced by both parties to the above entitled cause, which is material and necessary for the determination of the assignments of error set out by the petitioner in its petition for review by this Court of the decision of the Board of Tax Appeals, is herein set out in narrative form.

Edward F. Holtzman, having been first duly sworn as a witness on behalf of the petitioner, upon direct examination, testified as follows:

I am in the insurance business and have been employed by the Pan-American Life Insurance Company for approximately seventeen years, fourteen of which I have served in the capacity of Assistant Actuary.
102 I am a graduate of the University of Michigan—from the School of Actuarial Science.

In the year 1933 I had personal charge of maintaining reserves upon policies of insurance, including the reserves upon total and permanent disability provisions of policies where disability had occurred.

In the year 1932 the Company had set up a reserve for cases where persons covered with total and permanent disability insurance as riders to life insurance policies had become disabled. The same practice was followed in 1933. The purpose of the reserve is to enable the Company to pay the benefits which have occurred but which have not yet become due, and the reserve is set upon the basis of a table which shows the rates of death and recovery from disability.

The manner of setting up the reserve is to set up the present value of the probable future payments. If a person becomes disabled, under the terms of disability provisions in his policy we are required to pay a premium on his policy which becomes due say five years from now.

If he is still living and totally disabled, we have to have up as a reserve at the present time the amount of that premium discounted at three and one-half (3½%) per cent compound interest, and reduced by the probability of his living until that date on which the premium is due, and all of those various premiums which will be due in the future if he is still totally and permanently disabled and alive are each discounted at three and one-
103 half (3½%) per cent compound interest per annum to the date upon which the reserve is set up, and also reduced by the probability of living and still being fully and totally disabled on the premium due date.

The table referred to is Hunter's Rates of Termination of Disability on Disabled Lives.

There are two different forms of total and permanent disability provisions issued by the Pan-American Life Insurance Company. The first form is that which we call the premium waiver disability provision, and on the case of that form if a policy holder becomes totally and permanently disabled the company agrees to, or will pay the remaining premiums required on his policy as such premiums become due. The other form is where in addition to the waiver of future premiums on his life insurance policy the Company agrees to pay him as long as he is alive and totally and permanently disabled an annuity of so much per month.

There is no difference whatever in the manner in which reserves are set up on those two different types of disability benefits except that I will say this: That we have such policies that are limited payment life policies where the reserve is set up to cover only the payment of the remaining premiums which just last for the rest of the premium-paying period of the policy.

I am familiar with the manner in which reserves are set up on non-cancellable health and accident insurance

policies. The method does not differ from setting
104 up reserves on non-cancellable health and accident policies from the method in which the reserves are set up on the total and permanent disability provisions attached to life insurance policies of the type issued by the Pan American Life Insurance Company. The reserves are put up in the case of persons who have sustained disability.

The disability reserve at the end of any year is the equivalent of the reserve at the end of the previous year plus the present value or reserve on claims incurred during the current year, and less the reserves released on recoveries during the current year plus interest at three and one-half (3½%) per cent compound per annum.

Recoveries occur by either the death of the person who is disabled or by his actually recovering from his disability.

The amount that will be paid in all probabilities is not the reserve but is the reserve plus three and one-half (3½%) per cent accrued interest thereon.

CROSS EXAMINATION

By Mr. Akin:

In computing reserves on disability benefits, life contingencies are involved, and supplementary contracts do not involve life contingencies. However, in the case of supplementary contracts involving life contingencies, there is no difference, but in the case of supplementary contracts not involving life contingencies there is no discount or interest rate involved. Supplementary contracts not involving life contingencies are ones where the payment
105 is made even though the person named as beneficiary is not living; I mean the payments are made to someone else. The contract involving life

contingencies is one where periodical payments are made provided the recipient is still alive or receiving them as they fall due. When the recipient is not living, the payments are not made; in that case there is the probability of living, combined with the discount factor.

The reserves for contracts involving disability benefits are not set up until the policyholder becomes disabled. In that respect, it is just like a death claim that we have to set up when a man becomes disabled—we have to set up immediately the present value of probable future payments.

In the case where a policyholder has become disabled, but it is not known whether the disability will be permanent, the reserve is set up. It is presumed that when he becomes disabled, he is totally and permanently disabled, or otherwise the case would not be approved, but if he does recover or if he dies, the reserve is released. There have been cases where the policyholder received the benefit of the contract having a disability benefit clause therein, afterwards recovered from his disability.

The foregoing was all of the testimony offered on behalf of petitioner in this cause. Thereupon, counsel for petitioner and counsel for respondent stated that they had no further evidence to present and submitted the cause to the Member of the Board of Tax Appeals hearing the proceedings.

106 The petitioner, Pan-American Life Insurance Company, tenders and presents the foregoing as a statement of the evidence in the cause and prays that the same be approved by the United States Board of Tax Appeals, and made a part of the record in this cause.

Eugene J. McGivney
Attorney for Petitioner
on Review.

The foregoing is all of the material evidence introduced at the hearing before the Board of Tax Appeals and the same is approved by the undersigned, as attorney for the respondent on review.

(Signed) J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

The foregoing is all of the material evidence introduced at the hearing and in order that the same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this 5th day of June, 1939.

(s) Eugene Black
Member, United States
Board of Tax Appeals.

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107 United States Board of Tax Appeals
Filed June 2, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner on Review,

v. B. T. A. Docket No. 84638

PAN-AMERICAN LIFE INSURANCE COMPANY,
Respondent on Review.

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner on Review,

v. B. T. A. Docket No. 84638

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent on Review.

JOINT PRAECIPE FOR RECORD

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, copies duly certified as correct of the following documents and records in the above-entitled causes, in connection with the petitions for review by the said Circuit Court of Appeals for the Fifth Circuit, heretofore filed by the Commissioner of Internal Revenue and by the taxpayer, Pan-American Life Insurance Company:

1. Docket entries of the procedings before the Board.

2. Pleadings before the Board.

   (a) Petition including annexed copy of deficiency letter (Exhibit A), and photostatic copy of tax return for calendar year 1939 (Exhibit B).

   (b) Answer.

108 3. Stipulation of facts with all exhibits attached thereto, being C, D, E, F, G, H, I, J, K, L, M, N, and O, and supplemental stipulation of facts filed November 29, 1937.

4. Findings of fact, opinion and decision of the Board.

5. Petition for review filed by the Commissioner of Internal Revenue, together with proofs of service of notice of filing, petition for review and of service of a copy of petition for review.

6. Petition for review filed by the taxpayer, Pan-American Life Insurance Company, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

7. Court's order to consolidate, entered May 23, 1939.

8. Stipulation re: transcript of record.

9. Statement of evidence as settled and allowed.

10. This joint praecipe.

(Signed) J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Eugene J. McGivney
Attorney for Taxpayer.

JWS/cm 5/10/39

UNITED STATES BOARD OF TAX APPEALS
Washington

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v. Docket. No. 84638

PAN-AMERICAN LIFE INSURANCE COMPANY,
Respondent.

— — —

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v. Docket. No. 84638

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 108, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 17th day of June, 1939.

B. D. Gamble
Clerk,
United States Board of Tax Appeals.

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That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and submission

Extract from the Minutes of March 11th, 1940

No. 9175

COMMISSIONER OF INTERNAL REVENUE

vs.

PAN-AMERICAN LIFE INSURANCE COMPANY

and

PAN-AMERICAN LIFE INSURANCE COMPANY

vs.

COMMISSIONER OF INTERNAL REVENUE

On this day this cause was called, and, after argument by Eugene J. McGivney, Esq., for Pan-American Life Insurance Company, respondent and petitioner, and Edward H. Horton, Esq., Special Assistant to the Attorney General, for the Commissioner of Internal Revenue, petitioner and respondent, was submitted to the Court.

In The United States Circuit Court of Appeals for the Fifth Circuit

No. 9175

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

PAN-AMERICAN LIFE INSURANCE COMPANY, RESPONDENT

and

PAN-AMERICAN LIFE INSURANCE COMPANY, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Petitions for Review of Decision of the United States Board of Tax Appeals (District of Louisiana).

(April 20, 1940)

Before SIBLEY, HUTCHESON, and HOLMES, Circuit Judges

HOLMES, Circuit Judge: These two petitions for review were consolidated for purposes of the hearing, but the questions pre-

sented are distinct, and will be dealt with separately in this opinion.

In the first case, the question is whether reserves required by state law to be maintained by life insurance companies for the payment of incurred disability benefits are reserves required by law within the meaning of Section 203 (a) (2) of the Revenue Act of 1932. The board held that they were. 38 B. T. A. 1430.

The taxpayer is an insurance company incorporated under the laws of Louisiana. During the tax year 1933, it did business in Louisiana, Oklahoma, Indiana, and Illinois. More than fifty per centum of its total reserve funds was held for the fulfillment of its life-insurance and annuity contracts. Some of its policies provided for the waiver of premiums in event of the total and permanent disability of the insured, so long as such disability continued; others provided for the payment of monthly disability benefits. The laws of Oklahoma and Illinois required the insurer to maintain reserves for unpaid and unresisted claims incurred under these disability provisions. The taxpayer maintained such reserves computed according to a standard method. They were established only for the policies under which the insured had sustained total and permanent disability, and the continuance of benefits was subject to termination either by death or recovery from disability. In its tax return, the insurer computed the mean of such reserve funds held at the beginning and end of the taxable year, and deducted three and three-fourths per centum thereof, which the commissioner disallowed.

Section 201 (a) of the Revenue Act of 1932 defines a life insurance company to be a company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which, held for the fulfillment of such contracts, comprised more than fifty per centum of its total reserve funds.

This question has been before the Board of Tax Appeals four times, and before the Court of Claims once.[1] Those portions of the law which are applicable to this case were originally enacted in 1921, and have been re-enacted in each succeeding revenue act, including that of 1939. The administrative interpretation, as evidenced by Treasury Regulation 62, Art. 681, promulgated in 1922, and unchanged in this aspect until 1935, provided that reserves for amounts incurred but not due for total and permanent disability benefits were considered reserves as contemplated by the law. No life insurance company's right to the deduction

[1] Equitable Life Assurance Society v. Commissioner, 33 B. T. A. 708; Monarch Life Ins. Co. v. Commissioner, 38 B. T. A. 716; Pan American Life Ins. Co. v. Commissioner, supra; Oregon Mutual Life Ins. Co. v. Commissioner, (Jan. 4, 1939); New World Life Ins. Co. v. U. S., 26 Fed. Supp. 444.

was ever protested until 1934, when, after the decision of the Court of Claims in the case of Continental Assurance Company v. United States, 8 Fed. Supp. 474, the Commissioner concluded that such deductions should not be allowed. It will thus be seen that for thirteen years, including 1933, the administrative interpretation supported the taxpayer's contention. During this period, the Congress re-enacted the provisions without change, indicating that the administrative interpretation was not inconsistent with the legislative intent.[2] The attempt of the commissioner to apply 1935 treasury regulations to tax returns made for the year 1933 falls within the prohibition against retroactive application mentioned in Helvering v. R. J. Reynolds Tobacco Co., 306 U. S. 110.

Since the applicable provisions of the revenue act specifically define life insurance companies to include those issuing casualty contracts, and permit the reserve funds required by law held by such companies to be partially deductible, and since there is no express provision excluding casualty reserves from the coverage of the deduction, the most that can be said in favor of the construction urged upon us by the commissioner, in the light of the administrative interpretation, is that the statute is sufficiently ambiguous to give rise to a reasonable doubt as to its meaning, which we are required to resolve in favor of the taxpayer.[3]

The nature of the reserve in dispute is persuasive to the conclusion we have reached. Incurred disability reserves were created only after the disability had arisen. They were not fixed obligations. They were payable only in the future, and were contingent upon the continuance of both life and disability. Not being completely accrued, the extent of the probable liability thereunder was computed, and the amount of the reserve created was fixed, by tables of probability based upon approved rates of termination of such liability. The method of computation so employed is wholly consistent with that used for establishing amounts of premiums and reserves for ordinary life-insurance and annuity contracts, and is wholly inconsistent with reserves created to defray accrued and definite liabilities payable in the future. This is the distinguishing feature between the case at bar and those relied upon by the commissioner, which dealt with the reserves for the payment of accrued obligations for fixed amounts created by contract: The latter are mere solvency reserves having no relation to true insurance risks.[4]

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[2] U. S. v. Dakota-Montana Oil Co., 288 U. S. 459.

[3] Old Colony Trust Company v. Commissioner, 284 U. S. 151; White v. Aronson, 302 U. S. 16.

[4] McCoach v. Insurance Company of North America, 244 U. S. 585; United States v. Boston Insurance Company, 269 U. S. 197; Helvering v. Inter-Mountain Life Insurance Company, 294 U. S. 686; Helvering v. Illinois Insurance Company, 299 U. S. 88.

The purpose of Congress in allowing these deductions is obvious. By the provision enacted in 1921, life insurance companies for the first time were taxed upon their investment income only, and no deduction was allowed for claims paid to policy holders or for net additions made to reserve funds, as insurance companies classed "other than life" were permitted by the act to do. Apparently, Congress recognized that life insurance companies were required by law to maintain numerous reserves comprising a large proportion of their total assets. Being thus deprived of potential investment returns, and being required to credit such reserves with compound interest annually, the deduction was allowed as a necessary compensation for earnings foregone by compliance with the law.[5] Due to its classification for income tax purposes as a life insurance company, the taxpayer is denied the right to claim the deductions on its casualty reserves to which casualty companies are entitled. Therefore, to deny it the deduction here claimed would have the unjust effect of declaring these reserves to be under the law for the penalties imposed by it, and outside the law for the benefits flowing from it.

A further inconsistency in the position we are urged to take is evidenced by the provisions of Section 203 (a) (2) of the Revenue Act of 1932, which expressly permits percentage deductions upon casualty reserves held by life insurance companies on certain types of policies, even though not required by law. It is unreasonable to believe that Congress would discriminate between companies doing the same kind of casualty business, as the interpretation would require, when the conclusion we have reached is entirely in harmony with the theory of equal benefits. Our conclusion is that the reserve for incurred disability benefits held by the taxpayer was a fund required by law within the meaning of the statute.

The second petition for review, wherein the insurance company is the petitioner, involves the right of the taxpayer to deduct interest credited to two types of matured ordinary life policies which, under an option exercised by the insured prior to his death, were payable in installments. Under the terms of these policies, the election of an option by the insured precludes any selection by the beneficiary, and, in each of the policies involved in this case, the insured had so elected and the policies had matured. To provide for an increase in the amounts payable under this installment option, the insurer credited to these matured life policies during the taxable year additional sums of money which were deducted in the return as interest paid on indebtedness. These deductions are claimed to be authorized by

[5] Cf. Mass. Mutual Life Ins. Co. v. U. S., 56 F. (2) 897.

Section 203 (a) (8). The commissioner insists that the board was correct in finding that sums so credited to funds held for the liquidation of such contracts, even though computed at a specified rate of interest, were not interest paid upon indebtedness within the meaning of the statute. The issue turns upon the fact that the election to have the proceeds paid in installments, rather than in a lump sum, was made by the insured during his lifetime, and could not be altered or commuted after his death by the beneficiary.

The first type of policy provided for payment of part in a lump sum, upon proof of death, and the balance in monthly installments for 240 months. The total of these payments equalled the face value of the policy. As an option, the insured might elect a smaller sum (called the commuted value) payable at once in lieu of the settlement providing for monthly installments.

The second type of policy provided for the payment of a lump sum, upon proof of death, unless the insured during his lifetime, elected to have the proceeds paid in equal annual installments over a period of from five to twenty-five years, in which event the total amount paid would exceed the lump-sum settlement.

Under each of these policies, the installment options were specified in definite amounts, and were a part of the contract for which the insured paid his premiums. By election of the installment option, the amounts specified to be paid thereunder matured, upon his death, as the indebtedness owed by the company upon the policy. When the policies matured, the obligation upon the insurer was to pay the total amount specified by the installment terms. It is immaterial that interest comprised a part of the indebtedness, since the statute permits interest to be deducted only when paid or accrued on its indebtedness.[6] Interest, as used in the statute, means the premium paid for the use or forbearance of money.[7] Here, the beneficiaries were the creditors to whom the insurer was pledged to pay fixed sums at stated intervals.[8] The amount of the indebtedness was fixed upon the death of the insured, and the obligation to pay it was deferred, but the amount to be paid was not thereby increased. There was no forbearance from use, or permission to use, on the part of the beneficiaries, because at no time did they have the right to the use or possession of the money or the power to contract to forbear, except as the periodic installment payments became due. Upon the death of insured, the principal and interest were

[6] Penn. Mutual Life Insurance Company v. Commissioner, 92 F. (2) 962.
[7] Deputy v. Dupont, — U. S. —, 84 L. Ed. 313 (Jan. 8, 1940.
[8] Duffy v. Mutual Benefit Life Insurance Company, 272 U. S. 613.

merged to create the indebtedness, upon which no interest accrued.

The decision of the Board of Tax Appeals in each instance is Affirmed.

Judgment

Extract from the Minutes of April 20, 1940

No. 9175

COMMISSIONER OF INTERNAL REVENUE

vs.

PAN-AMERICAN LIFE INSURANCE COMPANY

and

PAN-AMERICAN LIFE INSURANCE COMPANY

vs.

COMMISSIONER OF INTERNAL REVENUE

This cause came on to be heard on the petitions of Commissioner of Internal Revenue and Pan-American Life Insurance Company for a review of a decision of the United States Board of Tax Appeals, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decision of the said United States Board of Tax Appeals in each instance is affirmed.

Clerk's certificate

United States of America

United States Circuit Court of Appeals, Fifth Circuit

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 84 to 92 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 9175, wherein Commissioner of Internal Revenue is petitioner, and Pan-American Life Insurance Company is respondent, and Pan-American Life Insurance Company is petitioner, and Commissioner of Internal Revenue is respondent, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 83 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 3rd day of July, A. D. 1940.

[SEAL]

OAKLEY F. DODD,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

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Supreme Court of the United States

Order allowing certiorari

Filed October 28, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Supreme Court, U. S.
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CHARLES ELMORE CROPLEY
CLERK

No. 364

In the Supreme Court of the United States

OCTOBER TERM, 1940

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

SAN ANTONIO LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. ———

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

PAN-AMERICAN LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit entered in the above case on April 20, 1940, affirming a decision of the United States Board of Tax Appeals.

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 34–55) is reported at 38 B. T. A. 1430. The opinion of the Circuit Court of Appeals (R. 84–89) is reported in 111 F. (2d) 366.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 20, 1940 (R. 89). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether reserves required by state laws to be maintained by a life insurance company for the payment of incurred disability benefits under policies of combined life, health, and accident insurance constitute "reserve funds required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved will be found in the Appendix, *infra*, pp. 10–16.

STATEMENT

From the findings of fact of the Board of Tax Appeals the following material facts appear:

The taxpayer is a life insurance company incorporated under the laws of the State of Louisiana, and during the tax year 1933 transacted business in the States of Louisiana, Oklahoma, Indiana, and Illinois (R. 36).

More than fifty percent of the taxpayer's total reserve funds held during the tax year 1933 were held for the fulfillment of its life insurance and annuity contracts (R. 36).

Among the life insurance policies issued by the taxpayer during the year 1933 were certain policies which carried additional provisions relating to certain noncancelable benefits in case the insured became totally and permanently disabled by accident or disease. These noncancelable benefits, for which in each case the insured obligated himself to pay an additional premium, were of two kinds (R. 36):

(1) Waiver of premiums by the taxpayer in case of the insured's total and permanent disability; and

(2) Both waiver of premiums and payment by the taxpayer to the insured of a monthly income in case of his total and permanent disability.

Policies of the first type, which carried waiver of premiums only in case of total and permanent disability, provided in part as follows (R. 37):

> PAN-AMERICAN LIFE INSURANCE COMPANY * * * Hereby Agrees, that upon receipt by the Company * * * of due proof * * * that the Insured has, while said policy * * * are [sic] in full force and prior to the anniversary date of said policy nearest to the sixtieth birthday of the Insured, become totally disabled, as the result of bodily injury or disease occurring after the issuance of said policy, so as to be wholly and continuously prevented thereby from engaging in his own or any other business or occupation and from performing any work for compensation

> or profit * * * and that such disability has already continued uninterruptedly for a period of at least six months (such disability of such duration being deemed to be permanent only for the purpose of determining the commencement of liability hereunder), the Company during the continuance of such disability will waive the payment of each premium under said policy * * * beginning with the premium, the due date of which next succeeds the date of commencement of such disability, provided that no premium shall be waived the due date of which is more than one year prior to the date of receipt at the Home Office of the Company of written notice of claim hereunder. * * *

Policies of the second type, which carried provisions relating to both waiver of premiums and payment of monthly income benefits in case the insured became totally and permanently disabled, contained substantially the above provision, and in addition another provision reading as follows (R. 37–38):

> 2. Pay to the insured * * * a monthly income of $10 for each $1,000 of face amount of said policy * * * such monthly income to be paid for each completed month of such continuous disability beginning with the fourth such month, provided, however, that in no case shall any monthly income be paid for the first three months of disability nor for any fractional part of a month of disability, nor for any period of disability

more than one year prior to the date of receipt at the Home Office of the Company of written notice of claim hereunder. * * *

The taxpayer at the beginning and end of the tax year 1933 maintained a "reserve for incurred disability benefits," representing unpaid and unresisted claims incurred under the above disability provisions of the respective policies as follows (R. 38):

	Beginning of year	End of year
Reserve for premium waiver benefits	$93,375.27	$113,674.60
Reserve for monthly income benefits	217,875.64	265,240.76
Total	311,250.91	378,915.36

The mean of the above reserve amounts to $345,083.13, and 3¾ per centum thereof equals $12,940.62.

The purpose of the reserve for incurred disability benefits is to enable taxpayer to pay the benefits which have occurred, but which have not yet become due. It is based upon a table which shows the rates of death and recovery from disability. The name of this table is "Hunter's Rate of Termination of Disability on Disabled Lives." The manner of setting up the reserve is to set up the present value of the probable future benefits. This is done by discounting the probable future benefits (either the waiver of premiums or both the waiver of premiums and the payment of a monthly income) at 3½ per centum compound interest, and reducing that amount with the aid of Hunter's table by the probability of the insured living and

still being totally and permanently disabled on the premium due date. This manner of setting up the reserve for incurred disability benefits does not differ from the manner in which reserves are set up on noncancelable health and accident insurance policies. The provisions in the policies which carried the noncancelable disability benefits involve life contingencies and differ from provisions of supplemental contracts which involve no life contingency. The reserve for incurred disability benefits is set up only in those policies where the insured has sustained total and permanent disability, and the waiver of premiums, or both the waiver of premiums and the payment of a monthly income, depending upon the type of policy, is subject in all cases to the continuance of such disability. The amount in the reserve at the beginning and end of the taxable year is reconciled as follows: To the reserve at the beginning of the year, add the present value of probable future benefits on claims incurred during the year, less reserves released on recoveries during the year, plus compound interest at 3½ per centum per annum. The recoveries occur either by the death of the person who is disabled, or by his actually recovering from his disability (R. 38–39).

The "reserve for incurred disability benefits" held by the taxpayer at the beginning and end of the tax year 1933 was required by the laws of the States of Oklahoma and Illinois, two of the states in which the taxpayer did business (R. 39–40), and

the source of the reserve was premium payments and income from investments thereof (R. 40).

The Board held that the taxpayer's so-called reserves for incurred disability benefits constituted "reserve funds required by law" within the meaning of the federal statute, and the Circuit Court of Appeals affirmed the Board's decision.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding and deciding that the reserves held by the taxpayer at the beginning and end of the calendar year 1933 for "incurred disability benefits" constituted "reserve funds required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

2. In holding and deciding that the reserves maintained by the taxpayer at the beginning and end of the calendar year 1933 for "premium waiver benefits" constituted "reserve funds required by law," within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

3. In holding and deciding that the reserves maintained by the taxpayer at the beginning and end of the calendar year 1933 for "monthly income benefits" constituted "reserve funds required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

4. In affirming the decision of the Board of Tax Appeals.

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REASONS FOR GRANTING THE WRIT

1. The decision below is in direct conflict with *New World Life Ins. Co.* v. *United States,* 26 F. Supp. 444, 460, wherein the Court of Claims of the United States held that a life insurance company writing policies of combined life, health, and accident insurance was not, under the provisions of Section 203 (a) (2) of the Revenue Acts of 1928 and 1932, entitled to include in its life insurance "reserve funds required by law" the reserves set up out of additional premiums paid for health and accident insurance covering total and permanent disability benefits. After the conflict between that case and the decision below had been called to its attention, this Court, on May 20, 1940, granted the taxpayer's petition for a writ of certiorari in the *New World Life Insurance Co.* case, No. 2, October Term, 1940.

2. The decision below conflicts in principle with decisions of this Court. It has been firmly established that the term "reserve funds required by law" as used in the revenue acts has a technical meaning and that not all reserves required to be maintained under applicable local law are "reserve funds required by law." Only reserves directly involving life insurance are covered by the revenue acts. Thus, in *Helvering* v. *Illinois Ins. Co.,* 299 U. S. 88, this Court held that reserves established on account of a "survivorship investment" feature

of 20-payment life policies, were not within the statute, saying (p. 90):

> The phrase "required by law" includes only reserves that directly pertain to life insurance. Other reserves, even though required by state statutes regulatory of the business authorized to be carried on by life-insurance companies, are not included.

See also *Helvering* v. *Inter-Mountain Ins. Co.*, 294 U. S. 686. Cf. *New York Life Ins. Co.* v. *Edwards*, 271 U. S. 109, 119; *United States* v. *Boston Insurance Co.*, 269 U. S. 197; *McCoach* v. *Insurance Co. of N. Amer.*, 244 U. S. 585.

In deciding that reserves held not against life insurance but held against health and accident insurance risks constitute "reserve funds required by law," the court below departed from the principles established in the foregoing decisions of this Court.

WHEREFORE, it is respectfully submitted that this petition should be granted.

FRANCIS BIDDLE,
Solicitor General.

JULY 1940.

APPENDIX

The pertinent provisions of the Revenue Act of 1932, c. 209, 47 Stat. 169, 223–227, pertaining to the tax on life insurance companies read as follows:

SUPPLEMENT G—INSURANCE COMPANIES

SEC. 201. *Tax on life insurance companies.*—(a) *Definition.*—When used in this title the term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.

* * * * *

SEC. 202. *Gross income of life insurance companies.*—(a) In the case of a life insurance company the term "gross income" means the gross amount of income received during the taxable year from interest, dividends, and rents.

* * * * *

SEC. 203. *Net income of life insurance companies.*—(a) *General rule.*—In the case of a life insurance company the term "net income" means the gross income less—

* * * * *

(2) *Reserve funds.*—An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that

in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ per centum shall be substituted for 4 per centum. Life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, shall be allowed, in addition to the above, a deduction of 3¾ per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only;

* * * * *

Article 971 of Treasury Regulations 77, as amended by Treasury Decision 4615, XIV–2 Cum. Bull. 312, approved December 18, 1935:

ART. 971. *Tax-exempt interest and reserve funds.*—Under paragraphs (1) and (2) of section 203 (a), life insurance companies are entitled to deduct from gross income:

* * * * *

(2) Four percent of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ percent shall be substituted for 4 percent.

In general, the reserve contemplated is a sum of money, variously computed or estimated, which, with accretions from interest, is set aside (reserved) as a fund with which to mature or liquidate, either by payment or reinsurance with other companies, future

unaccrued and contingent claims. It must be required either by express statutory provisions or by rules and regulations of the insurance department of a State, Territory, or the District of Columbia when promulgated in the exercise of a power conferred by statute, but such requirement, without more, is not conclusive; for example, it does not include reserves required to be maintained to provide for the ordinary running expenses of a business definite in amount, and which must be currently paid by every company from its income if its business is to continue, such as taxes, salaries, reinsurance, and unpaid brokerage; the reserve or net value of risks reinsured in other solvent companies to the extent of the reinsurance; reserve for premiums paid in advance; annual and deferred dividends; accrued but unsettled policy claims; losses incurred but unreported; liability on supplementary contracts not involving life contingencies; estimated value of future premiums which have been waived on policies after proof of total and permanent disability.

In any case where reserves are claimed, sufficient information must be filed with the return to enable the Commissioner to determine the validity of the claim. Reference should be made to the item in which the reserve appears in the annual statement and to the statute or insurance department ruling requiring that such reserves be held. Only reserves which are so required, which are peculiar to insurance companies, and which are dependent upon interest earnings for their maintenance will be considered. A company is permitted to make use of the highest aggregate reserve called for by any

State or Territory or the District of Columbia in which it transacts business, but the reserve must have been actually held.

* * * * *

Prior to amendment, Article 971 of Treasury Regulations 77 read as follows:

ART. 971. *Tax-exempt interest and reserve funds.*—Under paragraphs (1) and (2) of section 203 (a), life insurance companies are entitled to deduct from gross income:

* * * * *

(2) Four percent of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ percent shall be substituted for 4 percent. The reserve deduction is based upon the reserves required by express statutory provisions or by the rules and regulations of the state insurance departments when promulgated in the exercise of a power conferred by statute; but such reserves do not include assets required to be held for the ordinary running expenses of the business nor do they include the reserve or net value of risks reinsured in other solvent companies to the extent of the reinsurance. * * * Reserves maintained to provide for the ordinary running expenses of a business, definite in amount, and which must be currently paid by every company from its income if its business is to continue, such as taxes, salaries, reinsurance, and unpaid brokerage will not be considered. A company is permitted to make use of the highest aggregate reserve called for by any state in which it transacts business, but the

reserve must have been actually held as shown by the annual statement. Generally speaking, the following will be considered reserves as contemplated by the law: Items 7–11 of the liability page of the annual statement for life insurance companies, and items 16–19 and 26 of the liability page of the annual statement for miscellaneous stock companies, if a life insurance company is also transacting other kinds of insurance business. If other reserves are claimed, sufficient information must be filed with the return to enable the Commissioner to determine the validity of the claim. Reference should be made to the item in which the reserve appears in the annual statement and to the State statute or insurance department ruling requiring that such reserves be held. Only reserves which are so required, which are peculiar to insurance companies, and which are dependent upon interest earnings for their maintenance will be considered.

The pertinent provisions of the statutes of the State of Oklahoma, Oklahoma Statutes (1931), Vol. 2, c. 51, Art. 1, provide as follows:

10501. *Annual calculations of obligations of life companies.*—The insurance commissioner shall annually make calculations of all outstanding policies, additions thereto, unpaid dividends, and all other obligations of every life insurance corporation doing business in this State. All valuations made by him, or by his authority, shall be made upon the net premium basis. The legal minimum standard for valuation of contracts issued before the first day of January, nineteen hundred and ten, shall be the actuaries or combined experience table of mortality, with interest at four percent per annum, and for

valuation of contracts on or after said date, shall be the American experience table of mortality, with interest at three and one-half percent per annum. The commissioner may vary the standards of interest and mortality in the case of corporations of foreign countries as to contracts issued by such corporations in other countries than the United States, and in particular cases of invalid life and other extra hazards; and value policies in groups, use approximate averages for fractions of a year and otherwise, and accept the valuation of the department of insurance of any other state or country, if made upon a basis and according to standards not lower than herein required or authorized, in place of the valuation herein required.

10502. *Funds must equal liabilities—Violation—Penalty.*—When the actual funds of any life insurance company doing business in this State, exclusive of its capital, are not of a net cash value equal to its liabilities including the net value of its policies according to the basis and minimum standards prescribed or authorized by the laws of this State, it shall be the duty of the insurance commissioner to give notice to such company and its agents to discontinue issuing new policies within this State, until such time as its funds have become equal to its liabilities as aforesaid. * * *

The pertinent provisions of the statutes of the State of Illinois, Illinois Revised Statutes (1935), c. 73, Sec. 331, provide as follows:

SEC. 331. *Assets less than liabilities—Notice to company—Failure to make a deficit good—Penalty for issuance of policy—Annual valuation of outstanding policies, etc.—Term insurance—Reserve—*

"Premium-payment period" construed. Par. 10.

* * * * *

The Department of Trade and Commerce shall annually make valuations of all outstanding policies, additions thereto, unpaid dividends and all other obligations of every life insurance corporation doing business in this State. All valuations made by it or by its authority shall be made upon the net premium basis. The legal minimum standard for valuation of contracts issued before the first day of January, 1908, shall be the Actuaries' or Combined Experience Table of Mortality with interest at 4 per centum per annum and for valuation of contracts issued on or after said date shall be the American Experience Table of Mortality with interest at 3½ per centum per annum. The Department of Trade and Commerce may vary the standards of interest and mortality in the case of corporations from foreign countries as to contracts issued by such corporation in other countries than the United States, and in particular cases of invalid lives and other extra hazards; and value policies in groups, use approximate averages for fractions of a year and otherwise, and accept the valuation of the department of insurance of any other state or country if made upon the basis, and according to the standards not lower than herein required or authorized, in place of the valuation herein required.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 264

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

PAN-AMERICAN LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 34–55) is reported in 38 B. T. A. 1430. The opinion of the Circuit Court of Appeals (R. 84–89) is reported in 111 F. (2d) 366.

JURISDICTION

The judgment of the United States Circuit Court of Appeals was entered April 20, 1940 (R. 89). Petition for certiorari was filed on July 20, 1940,

and was granted on October 28, 1940. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether reserves required by state laws to be maintained by a life insurance company for the payment of incurred disability benefits under policies of combined life, health, and accident insurance constitute "reserve funds required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved will be found in the Appendix, *infra*, pp. 7–13.

STATEMENT

From the findings of the Board of Tax Appeals the following material facts appear:

The petitioner is a life insurance company incorporated under the laws of the State of Louisiana, and during the tax year 1933 transacted business in the States of Louisiana, Oklahoma, Indiana, and Illinois (R. 36).

More than fifty percent of the petitioner's total reserve funds held during the tax year 1933 were held for the fulfillment of its life insurance and annuity contracts (R. 36).

Among the life insurance policies issued by the petitioner during the year 1933 were certain pol-

icies which carried additional provisions relating to certain noncancellable benefits in case the insured became totally and permanently disabled by accident or disease. These noncancellable benefits, for which in each case the insured obligated himself to pay an additional premium, were of two kinds (R. 36):

(1) Waiver of premiums by the petitioner in case of the insured's total and permanent disability; and

(2) Both waiver of premiums and payment by the petitioner to the insured of a monthly income in case of his total and permanent disability.

The petitioner at the beginning and end of the tax year 1933 maintained a "reserve for incurred disability benefits," representing unpaid and unresisted claims incurred under the above disability provisions of the respective policies as follows (R. 38):

	Beginning of year	End of year
Reserve for premium waiver benefits	$93,375.27	$113,674.60
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Total	311,250.91	378,915.36

NOTE.—The mean of the above reserve amounts to $345,083.13, and 3¾ per centum thereof equals $12,940.62.

The purpose of the reserve for incurred disability benefits is to enable petitioner to pay the benefits where the disability has already occurred, but where such benefits have not yet become due. It is based

upon a table which shows the rates of death and recovery from disability, described as "Hunter's Rate of Termination of Disability on Disabled Lives." The reserve is computed by determining the present value of the probable future benefits. This is done by discounting the probable future benefits (either the waiver of premiums or both the waiver of premiums and the payment of a monthly income) at 3½ per centum compound interest, and adjusting that amount with the aid of Hunter's table by taking into account the probability of the insured living and still being totally and permanently disabled on the premium due date. The reserve for incurred disability benefits is set up only on those policies where the insured has already become totally and permanently disabled, and the waiver of premiums, or both the waiver of premiums and the payment of a monthly income, depending upon the type of policy, is subject in all cases to the continuance of such disability (R. 38-39).

The "reserve for incurred disability benefits" held by the petitioner at the beginning and end of the tax year 1933 was required by the laws of the States of Oklahoma and Illinois, two of the states in which the petitioner did business (R. 39-40), and the source of the reserve was premium payments and income from investments thereof (R. 40).

The Board held that the petitioner's so-called reserves for incurred disability benefits constituted

"reserve funds required by law" within the meaning of the federal statute, and the Circuit Court of Appeals affirmed the Board's decision.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding and deciding that the reserves held by the taxpayer at the beginning and end of the calendar year 1933 for "incurred disability benefits" constituted "reserve funds required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

2. In holding and deciding that the reserves maintained by the taxpayer at the beginning and end of the calendar year 1933 for "premium waiver benefits" constituted "reserve funds required by law," within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

3. In holding and deciding that the reserves maintained by the taxpayer at the beginning and end of the calendar year 1933 for "monthly income benefits" constituted "reserve funds required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

4. In affirming the decision of the Board of Tax Appeals.

ARGUMENT

The question whether reserves required by state laws to be maintained by a life insurance company for the payment of disability benefits under policies

of combined life, health, and accident insurance constitute "reserve funds required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932 is discussed in Point II of the Government's brief in *New World Life Ins. Co.* v. *United States,* No. 2, present Term, to which reference is hereby made.

It may be noted that the *New World* case involves reserves for so-called "Active Lives" as well as "Disabled Lives," whereas the instant case involves only reserves comparable to the "Disabled Lives." And we contend in the *New World* case that even if deductions are generally allowable with respect to reserves for health and accident insurance, they should not be allowed where the disability has already occurred.

CONCLUSION

The judgment of the court below should be reversed.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
ARNOLD RAUM,
EDWARD H. HORTON,
Special Assistants to the Attorney General.

NOVEMBER 1940.

APPENDIX

The pertinent provisions of the Revenue Act of 1932, c. 209, 47 Stat. 169, 223–227, pertaining to the tax on life insurance companies read as follows:

SUPPLEMENT G—INSURANCE COMPANIES

SEC. 201. TAX ON LIFE INSURANCE COMPANIES.—(a) *Definition.*—When used in this title the term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.

* * * * *

SEC. 202. GROSS INCOME OF LIFE INSURANCE COMPANIES.—(a) In the case of a life insurance company the term "gross income" means the gross amount of income received during the taxable year from interest, dividends, and rents.

* * * * * *

SEC. 203. NET INCOME OF LIFE INSURANCE COMPANIES.—(a) *General rule.*—In the case of a life insurance company the term "net income" means the gross income less—

* * * * *

(2) *Reserve funds.*—An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption

rate, the rate of 3¾ per centum shall be substituted for 4 per centum. Life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, shall be allowed, in addition to the above, a deduction of 3¾ per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only;

* * * * *

Article 971 of Treasury Regulations 77, as originally promulgated, provided as follows:

ART. 971. *Tax-exempt interest and reserve funds.*—Under paragraphs (1) and (2) of section 203 (a), life insurance companies are entitled to deduct from gross income:

* * * * *

(2) Four percent of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ percent shall be substituted for 4 percent. The reserve deduction is based upon the reserves required by express statutory provisions or by the rules and regulations of the State insurance departments when promulgated in the exercise of a power conferred by statute; but such reserves do not include assets required to be held for the ordinary running expenses of the business nor do they include the reserve or net value of risks reinsured in other solvent companies to the extent of the reinsurance. * * * Reserves maintained to

provide for the ordinary running expenses of a business, definite in amount, and which must be currently paid by every company from its income if its business is to continue, such as taxes, salaries, reinsurance, and unpaid brokerage will not be considered. A company is permitted to make use of the highest aggregate reserve called for by any State in which it transacts business, but the reserve must have been actually held as shown by the annual statement. Generally speaking, the following will be considered reserves as contemplated by the law: Items 7–11 of the liability page of the annual statement for life insurance companies, and items 16–19 and 26 of the liability page of the annual statement for miscellaneous stock companies, if a life insurance company is also transacting other kinds of insurance business. If other reserves are claimed, sufficient information must be filed with the return to enable the Commissioner to determine the validity of the claim. Reference should be made to the item in which the reserve appears in the annual statement and to the State statute or insurance department ruling requiring that such reserves be held. Only reserves which are so required, which are peculiar to insurance companies, and which are dependent upon interest earnings for their maintenance will be considered.

Article 971 of Treasury Regulations 77, as amended by Treasury Decision 4615, XIV–2 Cum. Bull. 310, 312, approved December 18, 1935:

ART. 971. *Tax-exempt interest and reserve funds.*—Under paragraphs (1) and (2) of section 203 (a), life insurance companies are entitled to deduct from gross income:

* * * * *

(2) Four percent of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ percent shall be substituted for 4 percent.

In general, the reserve contemplated is a sum of money, variously computed or estimated, which, with accretions from interest, is set aside (reserved) as a fund with which to mature or liquidate, either by payment or reinsurance with other companies, future unaccrued and contingent claims. It must be required either by express statutory provisions or by rules and regulations of the insurance department of a State, Territory, or the District of Columbia when promulgated in the exercise of a power conferred by statute, but such requirement, without more, is not conclusive; for example, it does not include reserves required to be maintained to provide for the ordinary running expenses of a business definite in amount, and which must be currently paid by every company from its income if its business is to continue, such as taxes, salaries, reinsurance, and unpaid brokerage; the reserve or net value of risks reinsured in other solvent companies to the extent of the reinsurance; reserve for premiums paid in advance; annual and deferred dividends; accrued but unsettled policy claims; losses incurred but unreported; liability on supplementary contracts not involving life contingencies; estimated value of future premiums which have been waived on policies after proof of total and permanent disability.

In any case where reserves are claimed, sufficient information must be filed with the

return to enable the Commissioner to determine the validity of the claim. Reference should be made to the item in which the reserve appears in the annual statement and to the statute or insurance department ruling requiring that such reserves be held. Only reserves which are so required, which are peculiar to insurance companies, and which are dependent upon interest earnings for their maintenance will be considered. A company is permitted to make use of the highest aggregate reserve called for by any State or Territory or the District of Columbia in which it transacts business, but the reserve must have been actually held.

* * * * *

The pertinent provisions of the statutes of the State of Oklahoma, Oklahoma Statutes (1931), Vol. 2, c. 51, Art. 1, provide as follows:

10501. *Annual calculations of obligations of life companies.*—The insurance commissioner shall annually make calculations of all outstanding policies, additions thereto, unpaid dividends, and all other obligations of every life insurance corporation doing business in this State. All valuations made by him, or by his authority, shall be made upon the net premium basis. The legal minimum standard for valuation of contracts issued before the first day of January, nineteen hundred and ten, shall be the actuaries or combined experience table of mortality, with interest at four percent per annum, and for valuation of contracts on or after said date, shall be the American experience table of mortality, with interest at three and one-half percent per annum. The commissioner may vary the standards of interest and mortality in the case of corporations of foreign coun-

tries as to contracts issued by such corporations in other countries than the United States, and in particular cases of invalid life and other extra hazards; and value policies in groups, use approximate averages for fractions of a year and otherwise, and accept the valuation of the department of insurance of any other state or country, if made upon a basis and according to standards not lower than herein required or authorized, in place of the valuation herein required.

10502. *Funds must equal liabilities—Violation—Penalty.*—When the actual funds of any life insurance company doing business in this State, exclusive of its capital, are not of a net cash value equal to its liabilities including the net value of its policies according to the basis and minimum standards prescribed or authorized by the laws of this State, it shall be the duty of the insurance commissioner to give notice to such company and its agents to discontinue issuing new policies within this State, until such time as its funds have become equal to its liabilities as aforesaid. * * *

The pertinent provisions of the statutes of the State of Illinois, Illinois Revised Statutes (1935), c. 73, ¶ 331, provide as follows:

¶ 331. *Assets less than liabilities—Notice to company—Failure to make a deficit good—Penalty for issuance of policy—Annual valuation of outstanding policies, etc.—Term insurance—Reserve—"Premium payment period" construed.*

§ 10.

* * * * *

The Department of Trade and Commerce shall annually make valuations of all outstanding policies, additions thereto, unpaid

dividends and all other obligations of every life insurance corporation doing business in this State. All valuations made by it or by its authority shall be made upon the net premium basis. The legal minimum standard for valuation of contracts issued before the first day of January, 1908, shall be the Actuaries' or Combined Experience Table of Mortality with interest at 4 per centum per annum and for valuation of contracts issued on or after said date shall be the American Experience Table of Mortality with interest at 3½ per centum per annum. The Department of Trade and Commerce may vary the standards of interest and mortality in the case of corporations from foreign countries as to contracts issued by such corporation in other countries than the United States, and in particular cases of invalid lives and other extra hazards; and value policies in groups, use approximate averages for fractions of a year and otherwise, and accept the valuation of the department of insurance of any other state or country if made upon the basis, and according to the standards not lower than herein required or authorized, in place of the valuation herein required.

* * * * * *

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 264

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

versus

PAN AMERICAN LIFE INSURANCE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

RESPONDENT'S MOTION FOR LEAVE TO FILE BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI OUT OF TIME

And

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

EUGENE J. McGIVNEY,
New Orleans, Louisiana,
Counsel for Respondent.

Montgomery-Andree Printing Co., Inc., 430-32 Chartres, N. O., La.

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In the

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RESPONDENT'S MOTION FOR LEAVE TO FILE BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI OUT OF TIME.

Comes now the respondent, Pan American Life Insurance Company, by its attorney, Eugene J. McGivney, and respectfully moves this Honorable Court for leave to file the accompanying Respondent's Brief in Opposition to Petition for a Writ of Certiorari herein out of time, and as cause therefor, respondent avers as follows:

On April 20, 1940, the United States Circuit Court of Appeals for the Fifth Circuit entered judgment in the above-entitled cause in favor of the respondent; and on

July 22, 1940, the petitioner filed a petition for a writ of certiorari in this Court. The reasons assigned by the petitioner for granting the writ were: (1) that the decision below is in direct conflict with the decision of the Court of Claims in *New World Life Insurance Company v. U. S.*, 26 Fed. Supp. 444, 460, now pending in this Court on certiorari, No. 2, October Term, 1940; and (2) that it also is in conflict in principle with certain decisions of this Court, viz: *Helvering v. Illinois Ins. Co.*, 299 U. S. 88; *Helvering v. Inter-Mountain Ins. Co.*, 294 U. S. 686. Cf. *New York Life Ins. Co. v. Edwards*, 271 U. S. 109, 119; *United States v. Boston Ins. Co.*, 269 U. S. 197; *McCoach v. Ins. Co. of North America*, 244 U. S. 585. (Pet., 8, 9).

According to Par. 3, Rule 38 of this Court, the respondent had until August 11, 1940, within which to file a brief in opposition to the granting of said petition for a writ of certiorari. The respondent did not file any brief in opposition within the time prescribed by the Rule, because the only meritorious reason assigned by the petitioner for the granting of the writ was that the decision of the court below is in direct conflict with the decision of the Court of Claims in the *New World Life Insurance Company* case.

On September 24, 1940, however, the Solicitor General filed a motion on behalf of the United States to dismiss the writ of certiorari in the *New World Life Insur-*

ance Company case on the ground that the question presented by the writ is moot. The Solicitor General's said motion contained a statement that this Court would "undoubtedly wish to consider whether there will remain any basis for certiorari in that case (the Pan American case), if it grants our motion to dismiss in the instant case (the *New World Life Ins. Co.* case)." (Solicitor General's Motion in *New World Life Ins. Co. v. U. S.*, No. 2, October Term, 1940, p. 5, fn. 3).

Respondent submits that the other reason assigned by the petitioner for the granting of the writ herein, that the decision below conflicts in principle with the decisions of this Court referred to above, is not meritorious; and that the petitioner's contention in this respect has been disposed of not only by the decision of the court below, but also by the decisions of the United States Circuit Courts of Appeals for the Ninth and First Circuits, respectively, in *Com. v. Oregon Mutual Life Ins. Co.*, 112 Fed. (2) 468, and *Com. v. Monarch Life Ins. Co.*, 113 Fed. (2) ___, both of which are in complete harmony with the decision of the court below.

The Solicitor General did not file his motion to dismiss the writ in the *New World Life Ins. Co.* case during the period granted by the rules of this Court within which respondent was permitted to file a brief in opposition to the petition for a writ of certiorari in the instant case. The respondent had no knowledge of the filing of said

motion to dismiss the writ in that case until sometime after it was filed in this Court on September 24, 1940. The respondent has prepared the within motion and the accompanying brief in opposition to the granting of the writ herein as expeditiously as possible after receiving knowledge of the filing of the Solicitor General's said motion.

WHEREFORE, respondent prays that its motion to file the accompanying brief in opposition to the granting of the writ herein may be granted.

EUGENE J. McGIVNEY,
New Orleans, Louisiana,
Counsel for Respondent.

October, 1940.

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1940

No. 264

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

versus

PAN AMERICAN LIFE INSURANCE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

Opinion Below.

The opinion of the court below (R. 32-60) is reported in 111 Fed. (2d) 366.

Jurisdiction.

The jurisdiction of this Court is set forth in the petition for a writ of certiorari herein. (R. 2).

Question Presented.

The question presented is stated in the petition for a writ of certiorari (p. 2).

Statutes and Regulations.

The statutes and regulations involved are printed in the petition for a writ of certiorari (pp. 10-16).

Statement.

A statement of the case is made in the petition for a writ of certiorari (pp. 2-7).

Reasons for Denying the Writ.

1. The petitioner assigns as a reason for granting the writ that the decision below is in direct conflict with *New World Life Insurance Company v. U. S.*, 266 Fed. Supp. 444, 460, now pending on certiorari in this Court, No. 2, October Term, 1940. On September 24, 1940, the Solicitor General filed a motion in said case to dismiss the writ on the ground that the question presented by it is moot. In the event that this Court should grant the Solicitor General's motion and dismiss the writ in the *New World Life Insurance Company* case, and also reverse the Court of Claims in accordance with the established practice of this Court in such cases (*Leader v. Apex Hosiery Co.*, 302 U. S. 656; *Woodring v. Clarksburg Bridge Company*, 302 U. S. 658; *Alejandrino v. Quezon*, 271 U. S. 528; *Brownlow v. Schwartz*, 261 U. S. 216, 218; *Heitmuller v. Stokes*, 256 U. S. 359; *Commercial Cable Co. v. Burleson*, 250 U. S. 360; *Public Utilities Comrs. v. Compania General de Tabacos*, 249 U. S. 425; *Berry v. Davis*, 242 U. S. 468, 470; *U. S. v. Hamburg Amerikanische Co.*, 239 U. S. 466), there will be no decision of the Court of Claims or of a United States Circuit Court of Appeals in conflict with the decision below. In fact, there are two other decisions

of United States Circuit Courts of Appeals, *Com. v. Oregon Mutual Life Ins. Co.* (9th), 112 Fed. (2) 468, and *Com. v. Monarch Life Ins. Co.* (1st), 113 Fed. (2) __, decided since the court below rendered its decision in the instant case, which are in agreement with the decision of the court below.

2. The other reason assigned by the petitioner for the granting of the writ is that the decision below conflicts in principle with the decisions of this Court in *Helvering v. Illinois Ins. Co.*, 299 U. S. 88; *Helvering v. Inter-Mountain Ins. Co.*, 294 U. S. 686. Cf. *New York Life Ins. Co. v. Edwards*, 271 U. S. 109, 119; *United States v. Boston Ins. Co.*, 269 U. S. 197; *McCoach v. Ins. Co. of North America*, 244 U. S. 585. (Pet., 8, 9). None of these cases involves the question of whether reserves required by state laws to be maintained by life insurance companies for the payment of disability benefits under policies of combined life, health, and accident insurance constitute "reserve funds required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932 or of any other revenue act. The court below and the courts in *Com. v. Oregon Mutual Life Ins. Co.* and *Com. v. Monarch Life Ins. Co.*, *supra*, effectively disposed of this contention of the petitioner and held against the Government.

Conclusion.

If this Court should dismiss the writ of certiorari and reverse the Court of Claims in *New World Life Ins. Co. v. U. S.*, No. 2, October Term, 1940, the decision below will not be in conflict with any decision of the Court of Claims or of any United States Circuit Court of Appeals

or of this Court. On the contrary, the decision of the court below will be in accordance with the decisions of the Ninth and First Circuits, respectively, in *Com. v. Oregon Mutual Life Ins. Co., supra,* and *Com. v. Monarch Life Ins. Co., supra.* If this Court should dismiss the writ in the *New World Life Insurance Company* case, petitioner respectfully submits that the petition for a writ of certiorari herein should be denied.

EUGENE J. McGIVNEY,
New Orleans, Louisiana,
Counsel for Respondent.

October, 1940.

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IN THE

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GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

PAN AMERICAN LIFE INSURANCE COMPANY, *Respondent.*

On Writ of Certiorari to the U. S. Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF PAN AMERICAN LIFE INSURANCE COMPANY, RESPONDENT.

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JURISDICTIONAL AUTHORITY

Writ of Certiorari under Sec. 240 (a), of the Judicial Code as amended by Act of February 13, 1925, granted on petition of Commissioner of Internal Revenue, on October 28th, 1940, to the U. S. Circuit Court of Appeals for the Fifth Circuit.

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1932:
Sec. 201 (a)
Sec. 203 (a) (2)

The Regulations involved will be found in the Appendix hereto.

QUESTION PRESENTED

Whether reserves required by state laws to be maintained by a life insurance company for total and permanent disability benefits on policies of combined life, health and accident insurance constitute "reserve funds required by law," within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 264.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

PAN AMERICAN LIFE INSURANCE COMPANY, *Respondent.*

On Writ of Certiorari to the U. S. Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF PAN AMERICAN LIFE INSURANCE COMPANY, RESPONDENT.

NATURE OF THE PROCEEDINGS.

These proceedings were initiated by the petition of the Pan American Life Insurance Company to the U. S. Board of Tax Appeals for a review of the ruling of the Commissioner of Internal Revenue levying a deficiency in the income tax payment of said Company for the year 1933.

Being dissatisfied, in part, with the ruling of the Board of Tax Appeals, the Commissioner of Internal Revenue petitioned the U. S. Circuit Court of Appeals, Fifth Circuit, for a review of the Board's ruling. The ruling of the Board was affirmed by the Circuit Court of Appeals, whereupon the Commissioner of Internal Revenue applied to this Court for a writ of certiorari which was granted on October 28th, 1940, ... U. S. .....

For simplicity, the Pan American Life Insurance Company will be referred to in this brief as "Respondent"—the capacity in which it appears before this Court.

QUESTION PRESENTED.

Whether reserves required by state laws to be maintained by a life insurance company for total and permanent disability benefits on policies of combined life, health, and accident insurance constitute "reserve funds required by law," within the meaning of Section 203 (a) (2) of the Revenue Act of 1932.

STATEMENT OF THE CASE.

Respondent is a life insurance company, incorporated under the laws of the State of Louisiana, with its principal office in the city of New Orleans.

The only issue here is on the refusal of the Commissioner to allow, in Respondent's 1933 income tax return, a deduction of,

> 3¾% on the mean reserve of $345,083.13 on non-cancellable premium waiver and monthly income benefits under Respondent's policies.

The said reserve is required by law as an incurred liability under Respondent's exhibits "C" and "D" (R. 16A and 16J) for benefits known as,

(1) Waiver of premium, (R. 16-G) and

(2) Both waiver of premiums and payment of a monthly income in case of total and permanent disability, (R. 16-O).

Referring to the two said non-cancellable benefits attached to Respondent's life insurance policies, it is stipulated (R. 13):

> "In 1933 petitioner maintained a reserve for unpaid and unresisted claims incurred under said disability provisions of the type attached to exhibits 'C' and 'D'. That the amount of the reserves so maintained is as set forth in the following table:

	Beginning of Year	End of Year
Reserve for premium waiver benefits	$93,375.27	$113,674.60
Reserve for monthly income benefits	217,875.64	265,240.76
	311,250.91	378,915.36"

Referring to the territory in which Respondent operates, it is also stipulated (R. 13):

> "That among the states in which the Petitioner transacted business in the calendar year 1933 were Louisiana, Oklahoma, Indiana and Illinois. That in 1933 it issued life insurance policies with non-cancellable premium waiver benefits as well as policies with both non-cancellable monthly income benefits and premium waiver benefits in the event of the insured becoming totally and permanently disabled by accident or disease; copies of such policies, with disability provisions attached, being annexed hereto and made a part hereof and marked Exhibits 'C' and 'D' respectively."

The uncontradicted testimony of Mr. Edward F. Holtzman, Assistant Actuary of Respondent (R. 76-77) is that the reserve of Respondent under the said non-cancellable total and permanent disability benefits is set up under Hunter's Rate of Termination of Disability on Disabled Lives"; that the amount of the said reserve at the end of any year is the equivalent of the reserve at the end of the previous year, plus the present value, or reserve, on disability claims incurred during the current year, and less the re-

serves released by recoveries during the current year, plus compound interest at 3½% per annum; that recoveries occur by either the death of the insured, or by his recovery from disability; *that such reserves are all probable reserves, according to the said Hunter's Table, to pay benefits incurred but not yet due; that the said Table deals in probable deaths and probable recoveries from disability; that the reserve for the waiver of premium benefit is the probable amount that the company would need to take care of the amount of premium waived under the said benefit, discounted at the rate of 3½% compound interest;* that the other reserve for the monthly income disability benefit is calculated under the said Hunter's Table in the same manner as is the amount of reserve for premium waiver benefit and that while the said benefits are incurred by the occurrence of disability, *the amount payable thereunder depends upon the continued life of the insured and the continuance of his disability,* and that any unpaid portion of the reserve is *recovered upon the death of the insured or termination of his disability;* that the said reserves are calculated in the same manner and under the same Table as the reserves for non-cancellable health and accident insurance policies; *that the said reserves are set up upon the occurrence of disability, as an incurred liability, recoverable either by the death of the insured, or by termination of his disability, and that the actual amount ultimately to be paid is uncertain because it is dependent upon the said contingencies of the insured surviving or his recovery.*

In its Findings of Fact, the Board found (38 B. T. A. 1430):

> "More than 50 per centum of its total reserve funds held during the taxable year were held for the fulfillment of its life insurance and annuity contracts." (R. 36.)

At the time of the preparation of this brief, Respondent has not been furnished with a copy of the brief Commissioner will file in this Court but, in connection with the

above stipulation covering the states where Respondent does business, in his brief in the Circuit Court of Appeals, the Commissioner said:

> "It is conceded that the so-called reserves in controversy here were required to be maintained by the laws of the several states in which the taxpayer did business. * * *

And, in connection with the question of the reserves being technical in character, it was said in his brief:

> "(b) *The nature and method of computation of the so-called reserve for incurred disability benefits here in controversy.*
>
> "It will not be disputed that the taxpayer's so-called 'reserve for incurred disability benefits' was computed by the taxpayer upon the basis of a table of probabilities showing the rates of death and recovery from disability, known as 'Hunter's Rate of Termination of Disability on Disabled Lives.' From the findings of the Board (R. 38-39) it appears that the manner of setting up this reserve is to set up the present value of probable future benefits, and that this is done 'by discounting the probable future benefits (either the waiver of premiums or both the waiver of premiums and the payment of a monthly income) at 3½ per centum compound interest, and reducing that amount with the aid of a Hunter's Table by the probability of the insured living and still being totally and permanently disabled on the premium due date.'
>
> "In other words, this so-called reserve was held by the taxpayer to meet its obligation to waive premiums, or to waive premiums and to pay a monthly income, depending upon the type of policy, in cases of total and permanent disability *where the insured had already become disabled.*
>
> "Here lies the crux of this case, it clearly appearing that the Court is here dealing with so-called reserves held against disabilities already incurred.
>
> "The issue here is not whether the taxpayer's so-called 'reserve for incurred disability benefits' was required to be maintained by state laws, but whether it constitutes 'reserve funds required by law' within the

meaning of the federal taxing statutes. Stated in another way, was this 'reserve for incurred disability benefits' held against *life risks* or was it a mere 'solvency' reserve which the taxpayer was required to maintain by state laws to insure the performance of its supplementary health and accident insurance contract obligations. New York Ins. Co. v. Edwards, 271 U. S. 109, 117-119."

"(c) *The Commissioner's position.*

It is the position of the Commissioner that only those reserves which are held for life risks on *life insurance contracts* in force and unmatured, constitute 'reserve funds required by law' within the meaning of the federal statutes."

SUMMARY OF ARGUMENT.

A company issuing life insurance and annuity contracts (including contracts of combined life, health and accident insurance) is taxed as a "life insurance company" if the reserve funds held for the fulfillment of such contracts comprise more than 50 per centum of its total reserves (1932 Revenue Act, Sec. 201 (a)). Hence, it is permitted to deduct from its gross investment income 3¾ per centum of its interest bearing reserves required by law and compiled upon a standard table of probabilities (1932 Revenue Act, Sec. 203 (a) (2)).

Interest bearing reserve funds, exacted under state laws, held for the payment of future disability benefits, if the disabled policyholder survives, and if he remains disabled, based upon assumption made under a recognized actuarial table, constitute *"reserve funds required by law"* within the meaning of Sec. 203 (a) (2). Reserve funds so held are based upon probabilities, and do *not* become a fixed liability, like that of *a solvency reserve*, as is contended by the Commissioner.

There are no decisions of the United States Supreme Court, nor of the Circuit Courts of Appeals, sustaining the contention of the Commissioner to the effect that only life

insurance reserves under life insurance policies and maintained to meet death claims are deductible: on the other hand, there are three decisions of Circuit Courts of Appeals which hold to the contrary: *Pan American Life Insurance Company* v. *Commissioner* (5th Circuit), 111 Fed. (2d) 366; *Commissioner* v. *Oregon Mutual Life Insurance Company* (9th Circuit), 112 Fed. (2d) 468; *Commissioner* v. *Monarch Life Insurance Company* (1st Circuit), 114 Fed. (2d) 314. The decision of the Court of Claims in *New World Life Insurance Company* v. *United States*, 26 Fed. Supp. 444, is erroneous and contrary to the decisions of three different Circuit Courts of Appeals.

The right of Respondent to deduct 3¾ per centum of such disability reserves had been recognized by the Commissioner since 1921 and was expressly recognized by Treasury Regulations of 1932 in effect during the taxable year in question—1933.

A subsequent change in the Treasury Regulations in 1935 has no retroactive effect and is not binding on Respondent with respect to its income taxes for the year 1933. (*Helvering* v. *R. J. Reynolds Tobacco Company*, 306 U. S. 110; *Helvering* v. *Wilshire Oil Company, Inc.*, 308 U. S. 90.).

ARGUMENT.

Prior to the Revenue Act of 1921 life insurance companies were taxed the same as all other corporations on their *net income from all sources, with a right to deduct from gross income the net additions, if any, made within the taxable year to reserve funds required by law.*

However, because so much of the premium income of a life insurance company (perhaps 60%) is required by state laws to be set up as an interest bearing reserve, the plan of taxing life insurance companies on the same basis as all other corporations proved unsatisfactory to both the Government and to the companies. After hearings held before the Senate Finance Committee, a plan was arrived at of taxing *gross* income from investments, but allowing a deduction therefrom of a sum not greater than 4% of the "*re-*

serve funds required by law"; also allowing a deduction therefrom of certain investment expenses.

The said plan was first incorporated in the Revenue Act of 1921, Sec. 242 and Sec. 245. Sec. 242 was reenacted under that number in each of the subsequent Acts of 1924 and 1926, and then under Sec. 201 (a) of the Act of 1928 and each Act thereafter including the Act of 1939. Sec. 245 (a) (2) was reenacted in the subsequent Acts, and is now 203 (a) (2).

The pertinent provisions of Secs. 201 (a), 202 and 203 (a) read as follows:

> "Sec. 201 (a) Definition.—When used in this title the term 'life insurance company' means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.
>
> "Sec. 202. *Gross Income of Life Insurance Companies.* (a) In the case of a life insurance company the term 'gross income' means the gross amount of income received during the taxable year from interest, dividends, and rents.
>
> "Sec. 203. *Net Income of Life Insurance Companies.* (a) *General Rule.*—In the case of a life insurance company the term 'net income' means the gross income less—
>
> (2) 'Reserve Funds.—An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ per centum shall be substituted for 4 per centum.'"

It will be seen that the said plan of taxing life insurance companies has been the law for the past nineteen years. *It will be hereafter shown that the Treasury Department regulations, until 1935, allowed life insurance companies to deduct 3¾% on the mean reserve required by law on incurred disability benefits.*

The Board of Tax Appeals, in *Equitable Life* v. *Commissioner*, 33 B. T. A. 708, passed on the question of whether or not reserves for non-cancellable accident and health policies issued by a life insurance company were mere solvency reserves or deductible reserves required by law, within the meaning of Sec. 203 (a) (2). The Board ruled that such reserves were not solvency reserves, but were interest bearing reserves, required by state laws to be held:

> "* * * for the payment of benefits *which will become due in the future, if the policyholders survive and remain disabled.*"

The Board also ruled that the reserves were based upon scientific tables of probabilities, dealing with life contingencies, and therefore were deductible.

The Board of Tax Appeals thereafter ruled upon the right of a life insurance company, issuing *combined life and disability policies*, to deduct on its disability reserves the 4% allowed by Sec. 203 (a) (2), in the following cases:

Monarch Life Insurance Company v. *Commissioner*, 38 B. T. A. 716.
Pan American Life Insurance Company v. *Commissioner*, 38 B. T. A. 1430.
Oregon Mutual Life Insurance Company v. *Commissioner*, 39 B. T. A. 1239.

In each case the Board followed its ruling in the *Equitable Life* case, *supra*. The Commissioner sought a review of the Board's ruling in each case, and three different Circuit Courts of Appeal, by unanimous opinions, affirmed the ruling of the Board.

The first of these cases to be decided by a Circuit Court of Appeals was the case at Bar, decided on April 20, 1940, by the Circuit Court of Appeals, Fifth Circuit, reported in 111 Fed. (2d) 366, which was followed by the decision of the Circuit Court of Appeals, Ninth Circuit, on June 12, 1940, in *Commissioner* v. *Oregon Mutual Life Insurance Company*, 112 F. (2d) 468, and, shortly thereafter, was followed by the Circuit Court of Appeals, First Circuit, on August

15, 1940, in *Commissioner* v. *Monarch Life Insurance Company*, 114 F. (2d) 314.

In the case here, the opinion of the Circuit Court of Appeals, Fifth Circuit, (pp. 367 and 368) says:

> "The taxpayer is an insurance company incorporated under the laws of Louisiana. During the tax year 1933, it did business in Louisiana, Oklahoma, Indiana, and Illinois. More than fifty per centum of its total reserve funds was held for the fulfillment of its life insurance and annuity contracts. Some of its policies provided for the waiver of premiums in event of the total and permanent disability of the insured, so long as such disability continued; others provided for the payment of monthly disability benefits. The laws of Oklahoma and Illinois required the insurer to maintain reserves for unpaid and unresisted claims incurred under these disability provisions. The taxpayer maintained such reserves computed according to a standard method. They were established only for the policies under which the insured had sustained total and permanent disability, and the continuance of benefits was subject to termination either by death or recovery from disability. In its tax return, the insurer computed the mean of such reserve funds held at the beginning and end of the taxable year, and deducted three and three-fourths per centum thereof, which the commissioner disallowed.
>
> "Section 201 (a) of the Revenue Act of 1932 defines a life insurance company to be a company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which, held for the fulfillment of such contracts, comprised more than fifty per centum of its total reserve funds.
>
> "This question has been before the Board of Tax Appeals four times, and before the Court of Claims once.[1] Those portions of the law which are applicable to this case were originally enacted in 1921, and have

[1] *Equitable Life Assurance Society* v. *Commissioner*, 33 B. T. A. 708; *Monarch Life Ins. Co.* v. *Commissioner*, 38 B. T. A. 716; *Pan American Life Ins. Co.* v. *Commissioner*, *supra*; *Oregon Mutual Life Ins. Co.* v. *Commissioner* (Jan. 4, 1939); *New World Life Ins. Co.* v. *U. S.*, 26 Fed. Supp. 444.

been re-enacted in each succeeding revenue act, including that of 1939. The administrative interpretation, as evidenced by Treasury Regulation 62, Art. 681, promulgated in 1922, and unchanged in this aspect until 1935, provided that reserves for amounts incurred but not due for total and permanent disability benefits were considered reserves as contemplated by the law. No life insurance company's right to the deduction was ever protested until 1934, when, after the decision of the Court of Claims in the case of Continental Assurance Company v. United States, 8 Fed. Supp. 474, the Commissioner concluded that such deductions should not be allowed. It will thus be seen that for thirteen years, including 1933, the administrative interpretation supported the taxpayer's contention. During this period, the Congress re-enacted the provisions without change, indicating that the administrative interpretation was not inconsistent with the legislative intent.[2] The attempt of the Commissioner to apply 1935 treasury regulations to tax returns made for the year 1933 falls within the prohibition against retroactive application mentioned in Helvering v. R. J. Reynolds Tobacco Co., 306 U. S. 110.

"Since the applicable provisions of the revenue act specifically define life insurance companies to include those issuing casualty contracts, and permit the reserve funds required by law held by such companies to be partially deductible, and since there is no express provision excluding casualty reserves from the coverage of the deduction, the most that can be said in favor of the construction urged upon us by the commissioner, in the light of the administrative interpretation, is that the statute is sufficiently ambiguous to give rise to a reasonable doubt as to its meaning, which we are required to resolve in favor of the taxpayer.[3]

"The nature of the reserve in dispute is persuasive to the conclusion we have reached. Incurred disability reserves were created only after the disability had arisen. They were not fixed obligations. They were payable only in the future, and were contingent upon the continuance of both life and disability. Not being

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[2] *U. S.* v. *Dakota-Montana Co.*, 288 U. S. 459.

[3] *Old Colony Trust Company* v. *Commissioner*, 279 U. S. 716; *White* v. *Aronson*, 302 U. S. 16.

completely accrued, the extent of the probable liability thereunder was computed, and the amount of the reserve created was fixed, by tables of probability based upon approved rates of termination of such liability. The method of computation so employed is wholly consistent with that used for establishing amounts of premiums and reserves for ordinary life-insurance and annuity contracts, and is wholly inconsistent with reserves created to defray accrued and definite liabilities payable in the future. This is the distinguishing feature between the case at bar and those relied upon by the commissioner, which dealt with the reserves for the payment of accrued obligations for fixed amounts created by contract. The latter are mere solvency reserves having no relation to true insurance risks.[4]

"The purpose of Congress in allowing these deductions is obvious. By the provision enacted in 1921, life insurance companies for the first time were taxed upon their investment income only, and no deduction was allowed for claims paid to policy holders or for net additions made to reserve funds, as insurance companies classed 'other than life' were permitted by the act to do. Apparently, Congress recognized that life insurance companies were required by law to maintain numerous reserves comprising a large proportion of their total assets. Being thus deprived of potential investment returns and being required to credit such reserves with compound interest annually, the deduction was allowed as a necessary compensation for earnings foregone by compliance with the law.[5] Due to its classification for income tax purposes as a life insurance Company, the taxpayer is denied the right to claim the deductions on its casualty reserves to which casualty companies are entitled. Therefore, to deny it the deduction here claimed would have the unjust effect of declaring these reserves to be under the law for the penalties imposed by it, and outside the law for the benefits flowing from it.

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[4] *McCoach* v. *Insurance Company of North America*, 244 U. S. 585; *United States* v. *Boston Insurance Company*, 269 U. S. 197; *Helvering* v. *Inter-Mountain Life Insurance Company*, 294 U. S. 686; *Helvering* v. *Illinois Insurance Company*, 299 U. S. 88.

[5] *Cf. Mass. Mutual Life Ins. Co.* v. *U. S.* 56 F. (2d) 897.

"A further inconsistency in the position we are urged to take is evidenced by the provisions of Section 203 (a) (3) of the Revenue Act of 1932, which expressly permits percentage deductions upon casualty reserves held by life insurance companies on certain types of policies, even though not required by law. It is unreasonable to believe that Congress would discriminate between companies doing the same kind of casualty business, as the interpretation would require, when the conclusion we have reached is entirely in harmony with the theory of equal benefits. Our conclusion is that the reserve for incurred disability benefits held by the taxpayer was a fund required by law within the meaning of the statute."

In *Commissioner* v. *Oregon Mutual Life Insurance Company*, 112 F. (2d) 468, after pointing out that the reserve in question is not a "solvency reserve" but a technical reserve computed upon the basis of probability tables and an assumed rate of interest, the Ninth Circuit, in the course of its opinion (p. 470) said:

"Considerable light is thrown on the problem by the provisions of Sec. 201 (a) of the act, 26 U.S.C.A. Int. Rev. Acts, page 546. A life insurance company is there defined as 'an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.'

"As applied, for example, to this taxpayer, the Commissioner construes the statute as meaning that the determinative ratio is between the non-disability elements of the company's reserves and a total comprising these plus the reserves held for the fulfillment of the disability features of its combined policies.

"The statute, however, says that the reserve funds which are to be compared with the total shall comprise reserves held 'for the fulfillment of such contracts'—namely, the contracts enumerated. These expressly include 'contracts of combined life, health, and accident insurance'. For the purpose of classification, the disability reserves held against the combined policies are

treated by the act as life insurance reserves. N
the Commissioner nor the court is at liberty to
gard the plain language of the section on the
that the classification lacks philosophical basi
must be borne in mind that we are dealing
statute, not with an actuarial problem.

"Since the words 'reserve funds', as used in th
sification statute, embrace disability reserves
against combined life and disability policies, we
persuasive reason to believe that they should b
to mean less than that when used in Sec. 203 (a
Had Congress intended a narrower application
term for the purpose of the deduction, presuma
would have said so in apt language. The word
serve funds required by law', used in the latter s
unquestionably refer to technical insurance res
But we think, as in Sec. 201 (a), they compr
reserves held to meet a life insurance company'
gations dependent either upon life contingenc
upon life and disability contingencies. The pro
contained in the last sentence of Sec. 203 (a) (2)
strongly to support this view."

The Commissioner argued orally and in his brief
Circuit Court of Appeals, and possibly will argue i
Court, that the change in the Treasury Department r
tions in 1935, mentioned above, was made to conform
decision of this Court in *Helvering* v. *Illinois Life*
ance Company, 299 U. S. 88, and *Helvering* v. *Inter-*
tain Life Insurance Company, 294 U. S. 686, the arg
being that those cases held that there may be no ded
for reserves, even though "required by law" unless
be reserves held for life risks on life insurance cont
Without a discussion of those cases beyond pointin
that in each case the reserve in question was obviou
mere solvency reserve—a coupon reserve in the
Mountain Life case, and a survivorship investment re
in the *Illinois Life* case—a complete answer to the Co
sioner's contention is found in the opinion of the C
Court of Appeals in the *Monarch Life Insurance Co*
case, where, in 114 F. (2d), on page 325, it is said:

"While certain language in Helvering v. Illinois Life Insurance Co., supra, appears to sustain the Commissioner's contention that the reserves must be technical life insurance reserves, an examination of all the cases shows that this is not true. 'The language used in an opinion must be read in the light of the issues presented.' Sinclair v. United States, 1929, 279 U. S. 749, 767, 49 S. Ct. 471, 477, 73 L. Ed. 938, 63 A.L.R. 1258. In the Illinois Life Insurance Co. case, as in Helvering v. Inter-Mountain Life Insurance Co., and Continental Assurance Co. v. United States, supra, also relied on by the Commissioner, the court distinguished between life insurance reserves and 'solvency' reserves. There was no question of drawing any line between life insurance reserves and other true insurance reserves. The only reserves to which the language could refer in all three cases were life insurance reserves. The question here presented was not in any manner raised. The Illinois case expressly approved the Inter-Mountain decision where the court said that reserves cannot 'include values that do not directly pertain to insurance' (1935, 294 U. S. 686, 690, 55 S. Ct. 572, 575, 79 L. Ed. 1227) with no words restricting the language to 'life' insurance. And the Inter-Mountain case approved the holding of the Court of Claims in the Continental Assurance Co. supra, decision that 'the reserve intended by the taxing act as a deduction is the amount set aside from premiums and built up by interest accretions to meet existing unmatured insurance, whether fire, marine, or life insurance' 8 F. Supp. 474, 478. The reserves in question here come completely within this definition and it is our opinion that Helvering v. Illinois Life Insurance Co. supra, intended in no way to limit this definition. Commissioner v. Oregon Mutual Life Insurance Co., supra; Pan American Life Insurance Company v. Comm. of Int. Rev., 1938, 38 B.T.A. 1430, 1438, affirmed, 5 Cir. 1940, 111 F. (2d) 366."

There are, of course, many other cases holding that solvency reserves, or other reserves not involving a life contingency, are not "reserve funds required by law" within the meaning of Sec. 203 (a) (2). For convenience, in the appendix hereto, there is a summary of the reported cases

passing on the words "reserve funds required by law."

None of the said decisions of the Supreme Court, however, pass on the effect of the words in Sec. 201 (a) "(including contracts of combined life, health or accident insurance)" in the matter of taxation of disability reserves of a life insurance company issuing combined life and disability policies.

The only decision of the Supreme Court which touches on disability reserves, is *New York Life Insurance Company* v. *Edwards,* 271 U. S. 109, arising under the Revenue Act of 1913, where the net additions to reserves required by law were deductible by all classes of insurance companies; therefore, the question of life insurance reserves as defined by the Act of 1921, could not have been at issue there. In that case, it held that the Company did not show enough to establish its right to deduct its reserves under the 1913 Act, but the decision intimates that upon a proper showing the reserve might have been deductible.

There is another reason for concluding that the Commissioner is in error in his interpretation of Sec. 201 (a). It is a provision to be found in Sec. 203 (a) (2) which was alluded to by the Fifth Circuit in *Commissioner* v. *Pan American Life Insurance Company,* but not quoted in the opinion. That provision reads as follows:

> "Life insurance companies issuing policies covering life, health and accident insurance combined in one policy, issued on the weekly premium payment plan, continuing for life and not subject to cancellation, shall be allowed, in addition to the above, a deduction of 3¾ per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable years * * *."

It will thus be seen that Sec. 203 (a) (2) specifically permits an industrial company writing on the weekly premium plan *combined life and health and accident insurance in one policy, to deduct* 3¾% on its life reserves, and 3¾% on its accident and health reserves, even though such reserve fund be not required by law.

In speaking of that paragraph, the Circuit Court of Appeals, Fifth Circuit, in the *Pan American Life Insurance Company* case, (p. 368) said:

> "It is unreasonable to believe that Congress would discriminate between companies doing the same kind of casualty business, as the interpretation would require, when the conclusion we have reached is entirely in harmony with the theory of equal benefits."

In each of the cases heard by the Circuit Court of Appeals, the Commissioner relied strongly upon *New World Life Insurance Company* v. *United States*, 26 F. Supp. 444 (Court of Claims), which is the only reported case supporting the Commissioner's contention, but the Fifth Circuit (in Pan American Life) and the Ninth Circuit (in Oregon Mutual Life), without much discussion of the opinion of the Court of Claims (in New World Life) declined to follow it and affirmed the Board of Tax Appeals. However, the First Circuit (in Monarch Life) does discuss the said opinion at great length, and after first observing that the Court of Claims squarely sustained the Commissioner, the Court said it did not agree with the conclusion of the Court of Claims that an interest bearing reserve required by state laws was only a solvency reserve, and that under Sec. 201 (a) and 203 (a) (2) Congress intended to limit the reserves deductible by life insurance companies to reserves only when maintained for death benefits under a life policy; that if Congress had that intention it could have easily said so; that such interpretation of the law by the Court of Claims disregards the fact that under the Revenue Act of 1932, life insurance companies are taxed upon gross income earned on investments, and that, since the reserve funds required by law are improved with interest, it is apparent that interest, when added to reserves, is not income to the Company; that referring to the distinction attempted by the Commissioner between reserves that "belong" or "do not belong" to the Company, the statute nowhere makes such distinction, and that the question to be decided is not what "belongs" to the Company, but what

Congress wishes to tax; that the said reasoning of the Court of Claims is, in the opinion of the Court, insupportable, and that the Court prefers to follow the reasoning and the ruling of the Board of Tax Appeals and the opinions of the Circuit Court of Appeals for the Fifth Circuit (in Pan American) and of the Ninth Circuit (in Oregon Mutual) which the Court finds to be strictly in point.

The Treasury Regulations under each Revenue Act from 1921 to 1932, both inclusive, provide that "generally speaking," Items 7-11 of the liability page of the annual statement of life insurance companies *"will be considered reserves, as contemplated by the law."* An extract from Treasury Regulations of 1932, Article 971, is printed in the appendix hereto.

Item 9 of the liability page of the uniform statement of the National Convention of Insurance Commissioners (1933 form) reads as follows:

> "9. Present value of amounts *incurred but not yet* due for total and permanent disability benefits * * * $....."

An extract from the uniform statement of National Convention of Insurance Commissioners (1933 form) containing a reproduction of Items 7 to 11, inclusive, of the liability page thereof, is to be found in the appendix to this brief.

The printed Income Tax Return form prepared by the U. S. Treasury Department for use by insurance companies requires the taxpayer to set out in that return the identical information appearing in Item 9 of the liability page of the statement of the National Convention of Insurance Commissioners. An examination of Respondent's 1933 income tax return (R. 10F—Exhibit "B") will show that Line 4, under Schedule A—reserve funds, reads:

> "Reserve for Incurred Disability Benefits"

and that Respondent has entered upon that line in its 1933 Income Tax Return the reserve held by it for incurred dis-

ability benefits, being $311,250.91 at the beginning of the taxable year and $378,915.36 at the end of the taxable year; the mean of which is $345,083.13—the amount set out in the stipulation entered into between the Commissioner and Respondent (R. 13).

It is thus seen that not only did the Treasury Regulations of 1932 recognize reserves held for incurred disability benefits as deductible reserves under the Revenue Act, but the Income Tax Return form made provision for the entry of that specific data in the form.

In his brief filed in the Circuit Court of Appeals in this case, the Commissioner argued that to conform to the decisions of the Supreme Court in *Helvering* v. *Illinois Life, supra*, and *Helvering* v. *Inter-Mountain Life, supra*, he changed his Regulations in 1935 by Treasury Regulations 86, pertaining to the Revenue Act of 1934, to provide by Article 203 (a) (2)-1 that the term "reserve funds required by law" does not include:

> "* * *; liability on supplementary contracts not involving life contingencies; (or the) estimated value of future premiums which have been waived on policies after proof of total and permanent disability."

The Commissioner then asserted that since Congress reenacted Sec. 201 (a) and Sec. 203 (a) (2), the said change in Regulations is retroactive and therefore applies to Respondent's 1933 return, and "must be accepted here as controlling and having the force and effect of law."

As heretofore pointed out, there is nothing in the *Illinois Life* case or the *Inter-Mountain Life* case restricting the term "reserve required by law", as used in Sec. 203 (a) (2), to insurance reserves maintained on life insurance policies and held for death benefits. But whatever may have influenced the Commissioner to change his Regulations in 1935, such change can have no binding effect upon Respondent with respect to its 1933 income taxes.

The U. S. Supreme Court, in *Helvering* v. *R. J. Reynolds Tobacco Company*, 306 U. S. 110, expressly held that the

Secretary of the Treasury had no authority to apply the amended Regulations to years prior to the effective date of the amendment. The opinion by Mr. Justice Roberts states, page 116:

> *"We hold that respondent's tax liability for the year 1929 is to be determined in conformity to the regulation then in force."*

and at page 116:

> *"Since the legislative approval of existing regulations by reenactment of the statutory provision to which they appertain gives such regulations the force of law, we think that Congress did not intend to authorize the Treasury to repeal the rule of law that existed during the period for which the tax is imposed."*

In *Helvering* v. *Wilshire Oil Company, Inc.*, decided by the U. S. Supreme Court on November 16, 1939, 308 U. S. 90, the *Reynolds Tobacco Company* case was impliedly approved. We quote, in part, from the opinion of Mr. Justice Douglas, as follows:

> "But in any event, the validity of the regulations in question seems clear. The oft-repeated statement that administrative construction receives legislative approval by reenactment of a statutory provision, without material change (*United States* v. *Dakota-Montana Oil Co.*, 288 U. S. 459) covers the situation where the validity of administrative action standing by itself may be dubious or where ambiguities in a statute or rules are resolved by reference to administrative practice prior to reenactment of a statute; and where it does not appear that the rule or practice has been changed by the administrative agency through exercise of its continuing rule-making power. It does not mean that a regulation interpreting a provision of one act becomes frozen into another act merely by reenactment of that provision, so that that administrative interpretation cannot be changed prospectively through exercise of appropriate rule-making powers."

* * * * * * *

"The only remaining question is whether Treasury Regulations 74, Art. 221 (i) were within the power of the Commissioner to promulgate. That they were seems clear beyond question. We are not dealing here, as was this Court in *Helvering* v. *R. J. Reynolds Tobacco Co.*, 306 U. S. 110, with regulations applied retroactively. These are applied prospectively only."

It will be seen from these two reeent decisions that the law is well settled that while the Commissioner may amend his regulations and apply them prospectively to *subsequent years*, he may not apply his amendments to *prior years*, as the Commissioner is seeking to do here with Respondent's 1933 income tax return.

As hereinabove pointed out, the Commissioner's regulations for each year from 1921 to 1935 (when the Commissioner changed his regulations) expressly authorized a deduction of the statutory percentage of the mean of Respondent's disability reserves for "premium waiver" and "premium waiver and monthly income" benefits.

In his brief filed in the Circuit Court of Appeals, the Commissioner cited the case of Estate of *Sanford* v. *Commissioner*, 308 U. S. 39 as supporting his theory of a retroactive effect of the 1933 Treasury Regulations, but that case expressly holds:

"Administrative practice may be of persuasive weight in determining the construction of a statute of doubtful meaning where the practice does not conflict with other provisions of the statute and is not so inconsistent with applicable decisions of the courts as to produce inconsistency and confusion in the administration of the law. Such a choice, in practice, of one of two possible construtions of a statute by those who are expert in the field and specially informed as to administrative needs and conveniences, tends to the wise interpretation and just administration of the law. This is the more so when reliance has been placed on the practice by those affected by it.

"But courts are not bound to accept the administration construction of a statute regardless of conse-

quences, even when disclosed in the form of ruling
See *Helvering* v. *New York Trust Co.*, 292 U. S. 4
468, 78 L. Ed. 1361, 1368, 54 S. Ct. 806."

and in head note (9):

"The courts are not bound to accept an admini
trative construction of a statute, even when that co
struction is in the form of rulings."

It will be seen from this that the Commissioner is wit
out legal right, under recent decisions of the U. S. Supre
Court, to apply his amended 1935 Regulations to Respo
dent's 1933 return, and that Regulations are not absolute
binding on the courts, and that amendments to regulatio
are approved only when they are consistent with and ma
to conform to decisions of the courts interpreting the la

Speaking of the Commissioner's contention that the Re
ulations of 1935 were retroactive, the First Circuit, in t
Monarch Life case, *supra*, used the following language:

"The regulations were not changed to exclude the
reserves until 1935. (Regulations 86, approved Fe
11, 1935). Thus for thirteen years, the administrati
practice supported the taxpayer's contention. T
Commissioner should not now be permitted to ap
retroactively against the petitioner any new regul
tions made after the tax years in question, particular
after Congressional re-enactment under the previo
regulations."

CONCLUSION.

The judgment of the Court of Appeals should be
firmed.

Respectfully submitted,

EUGENE J. McGIVNEY,
1340 Canal Bank Bldg.,
New Orleans, La.
Attorney for Respondent,
Pan American Life Insurance

APPENDIX.

Summary of Cases Passing on the Words "Reserve Funds Required by Law" and Holding That Liabilities of the Following Types Are Not Such Reserves:

Unpaid bills, taxes, salaries and brokerage.[1]
Unpaid death losses.[2]
Unreported death losses.[3]
Accrued but unpaid disability benefits.[4]
Deferred dividends.[5]
Annual dividends.[6]
Dividends left to accumulate at interest.[7]
Coupons left on deposit.[8]
Premiums paid in advance.[9]
Mortality fluctuation fund.[10]
Securities deposited with State Insurance Department.[11]
Deficiency reserves as required by New York Insurance Law.[12]
Survivorship funds.[13]

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[1] *Maryland Cas. Co.* v. *U. S.*, 251 U. S. 342, 349;

[2] *Mass Mutul* v. *U. S.*, 56 F. (2d) 897, 901;

[3] *N. Y. Life* v. *Edwards*, 271 U. S. 109, 119;

[4] *Mass. Mutual* v. *U. S.*, 56 F. (2d) 897, 898, 901; *Equitable Life Assur. Soc.*, 33 B. T. A. 708, 712;

[5] *Minn. Mutual* v. *U. S.*, 66 Ct. Cl. 481;

[6] *Mass. Mutual* v. *U. S.*, 56 F. (2d) 897, 901;

[7] *Mass. Mutual* v. *U. S.*, 56 F. (2d) 897; *Midland Mutual*, 19 B. T. A. 765; *Equitable Life Assur. Soc.*, 33 B. T. A. 708, 716-717;

[8] *Helvering* v. *Inter-Mountain Life*, 294 U. S. 686, 689-690; *Helvering* v. *Atlas Life*, 78 F. (2d) 166; *Helvering* v. *Missouri State Life*, 78 F. (2d) 778; *Continental Assur. Co.* v. *U. S.*, 8 F. Supp. 474, 479-483;

[9] *Midland Mutual Life*, 19 B. T. A. 765, 770; *Interstate Reserve Life*, 37 B. T. A. 54;

[10] *Old Line Ins. Co.*, 13 B. T. A. 758, 763;

[11] *Midland National Life*, 14 B. T. A. 200; *Kaskaskia Life*, 22 B. T. A. 210; *Commonwealth Life*, 31 B. T. A. 887;

[12] *North American Reassur. Co.*, 29 B. T. A. 683;

[13] *Helvering* v. *Illinois Life*, 299 U. S. 88, 90-91; *Farmers Life*, 27 B. T. A. 423.

Treasury Regulations of 1932, Art. 971.

Art. 971. Tax-exempt interest and reserve funds.—Under paragraphs (1) and (2) of section 203 (a), life insurance companies are entitled to deduct from gross income:

* * * * * * *

(2) Four per cent of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ per cent shall be substituted for 4 per cent. The reserve deduction is based upon the reserves required by express statutory provisions or by the rules and regulations of the State insurance departments when promulgated in the exercise of a power conferred by statute; but such reserves do not include assets required to be held for the ordinary running expenses of the business nor do they include the reserve or net value of risks reinsured in other solvent companies to the extent of the reinsurance.

* * * * * * *

* * * A company is permitted to make use of the highest aggregate reserve called for by any State in which it transacts business, but the reserve must have been actually held as shown by the annual statement. Generally speaking, the following will be considered reserves as contemplated by the law: Items 7-11 of the liability page of the annual statement for life insurance companies * * *.

Lines 7 to 11, Both Inclusive, From Annual Statement of National Convention of Insurance Commissioners—1933 Form.

7. Net Reserve (Paid for Basis), excluding disability .....$

8. Extra reserve for total and permanent disability benefits (less $ reinsurance) $ and for additional accidental benefits (less $ reinsurance) $ included in life policies .....$

9. **Present value of amounts incurred, but not yet due for total and permanent disability benefits less $ reinsurance** .....$

10. Present value of amounts not yet due on supplementary contracts *not* involving life contingencies, computed by the excluding disability claims included in Item 9 .....$

11. Liability on policies cancelled and not included in "net reserve" upon which a surrender value may be demanded.....$

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 264.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

versus

PAN AMERICAN LIFE INSURANCE COMPANY, *Respondent.*

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

RESPONDENT'S MOTION TO ADVANCE THE WITHIN CAUSE FOR ARGUMENT IN THE EVENT THAT THE PETITION FOR A WRIT OF CERTIORARI HEREIN IS GRANTED.

EUGENE J. MCGIVNEY,
New Orleans, Louisiana,
Counsel for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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RESPONDENT'S MOTION TO ADVANCE THE WITHIN CAUSE FOR ARGUMENT IN THE EVENT THAT THE PETITION FOR A WRIT OF CERTIORARI HEREIN IS GRANTED.

COMES NOW the respondent, Pan American Life Insurance Company, by its attorney, Eugene J. McGivney, and respectfully moves this Honorable Court to advance the within cause for argument to follow the argument in *New*

World Life Insurance Company v. *U. S.*, No. 2, on November 18, 1940, in the event that this Court should grant the Government's petition for a writ of certiorari herein, and as cause therefor respondent avers as follows:

1. On April 20, 1940 the United States Circuit Court of Appeals for the Fifth Circuit entered judgment in the above-entitled cause in favor of the respondent; and on July 22, 1940 the petitioner filed a petition for a writ of certiorari in this Court, assigning as a reason for granting the writ that the decision below was in direct conflict with the decision of the Court of Claims in *New World Life Insurance Company* v. *U. S.*, 26 Fed. Supp. 444, 460, then pending in this Court on certiorari, No. 2, October Term, 1940. (Pet. 8 and 9.)

2. On September 24, 1940 the Government filed a motion in this Court to dismiss the writ in the *New World Life Insurance Company* case on the ground that the question presented by the writ was moot. On October 7, 1940 respondent filed a motion in this Court for leave to file a brief in opposition to the petition for a writ of certiorari out of time, respondent's objection, however, being contingent only upon this Court's dismissing the writ in the *New World Life Insurance Company* case. On October 14, 1940 this Court granted the respondent's said motion to file a brief in opposition to the granting of the petition for a writ of certiorari herein; and on the same date the Court denied the Government's motion to dismiss the writ in the *New World Life Insurance Company* case.

3. The question involved in the instant case is similar to that presented by the writ in the *New World Life Insurance Company* case; and if this Court should grant the petition for a writ of certiorari herein, this case appropriately

should be heard by this Court following the argument in the *New World Life Insurance Company* case on November 18, 1940.

WHEREFORE, respondent prays that its motion to advance the within cause for argument may be granted in the event that this Court grants the Government's petition for a writ of certiorari herein.

EUGENE J. McGIVNEY,
New Orleans, Louisiana,
Counsel for Respondent.

October, 1940.

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SUPREME COURT OF THE UNITED STATES.

No. 264.—October Term, 1940.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner,
vs.
Pan-American Life Insurance Company.

Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[December 9, 1940.]

Mr. Justice Black delivered the opinion of the Court.

This case involves respondent's income tax for the tax year 1933. It is in all respects governed by our decision in *Helvering* v. *Oregon Mutual Life Ins. Co.*, No. 564, this day decided, and on the authority of that case the decision below is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

END